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HOUSE OF REPRESENTATIVES

REPT. 99-636
Part 1

M 18 ORIGINAL

PRICE-ANDERSON AMENDMENTS ACT OF 1986

JUNE 12, 1986.—Ordered to be printed

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Mr. UDALL, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

together with

ADDITIONAL SUPPLEMENTAL AND DISSENTING VIEWS

[To accompany H.R. 3653]

[Including cost estimate of the Congressional Budget Office]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H.R. 3653) to amend the Price-Anderson provisions of the Atomic Energy Act of 1954 to extend and improve procedures for liability and indemnification for nuclear incidents, having considered the same, report favorably thereon with an amendent and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Price-Anderson Amendments Act of 1986."

SEC. 2. FINANCIAL PROTECTION.

(a) PRIMARY FINANCIAL PROTECTION AMOUNT REQUIRED FOR LARGE ELECTRICAL GENERATING FACILITIES.—Section 170 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(b)) is amended—

(1) by inserting "primary" before "financial protection" the first, second, third, and sixth places it appears;

(2) by inserting before the period at the end of the proviso in the first sentence the following: "(excluding the amount of private liability insurance available under the industry retrospective rating plan required in this subsection), or $200,000,000, whichever amount is more"; and

(3) by striking in the third sentence all that precedes "private liability insurance" and inserting the following: "The Commission shall require licensees that are required to have and maintain primary financial protection equal to the maximum amount of liability insurance available from private sources, or

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$200,000,000, which amount is more, to maintain, in addition to such primary financial protection,".

(b) STANDARD DEFERRED PREMIUM AMOUNT.—Section 170 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(b)) is amended—

(1) in the second proviso of the third sentence, by striking "That" and all that follows through "protection" and inserting the following: "That the standard deferred premium that may be charged following any nuclear incident under such a plan shall not be more than $63,000,000 (but not more than $10,000,000 in any 1 year) for each facility required to maintain the maximum amount of primary financial protection"; and

(2) in the third proviso of the third sentence, by striking "and costs".

(c) BORROWING AUTHORITY.—Section 170 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(b)) is amended—

(1) by inserting "(1)" after the subsection designation;

(2) in the first sentence, by redesignating clauses (1) through (3) as clauses (A) through (C), respectively;

(3) by striking the fifth and sixth sentences;

(4) by inserting "(2)" before the penultimate sentence and redesignating the penultimate and last sentences as a paragraph (2); and

(5) by adding at the end the following new paragraph:

"(3)(A) In the event that the Commission is liable for any deferred premiums pursuant to paragraph (2), the Commission shall—

"(i) request the Congress to appropriate sufficient funds to satisfy such payments; or

"(ii) to the extent approved in appropriation Acts, issue to the Secretary of the Treasury obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be agreed to by the Commission and the Secretary of the Treasury.

"(B) Any funds appropriated pursuant to subparagraph (A)(i) shall be repaid to the general fund of the United States Treasury from amounts made available by future deferred premium assessments, with interest at a rate determined by the Secretary of the Treasury on the basis of the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the date that the funds appropriated are made available.

"(C) Redemption of obligations issued under subparagraph (A)(ii) shall be made by the Commission from amounts made available by future deferred premium assessments. Such obligations shall bear interest at a rate determined by the Commission by taking into consideration on the average market yield on outstanding marketable obligations to the United States of comparable maturities during the months preceding the issuance of the obligations under this paragraph. The Secretary of the Treasury shall purchase any issued obligations, and for such purpose the Secretary of the Treasury may use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, United States Code, and the purposes for which securities may be issued under such chapter are extended to include any purchase of such obligations. The Secretary of the Treasury may at any time sell any of the obligations acquired by the Secretary of the Treasury under this paragraph. All redemptions, purchases, and sales by the Secretary of the Treasury of obligations under this paragraph shall be treated as public debt transactions of the United States.".

SEC. 3. INDEMNIFICATION AGREEMENTS FOR LICENSEES OF NUCLEAR REGULATORY COMMISSION.

Section 170c. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(c)) is amended by striking "August 1, 1987" each place it appears and inserting "August 1, 1997".

SEC. 4. INDEMNIFICATION AGREEMENTS FOR ACTIVITIES UNDERTAKEN UNDER CONTRACT WITH THE DEPARTMENT OF ENERGY.

(a) IN GENERAL.—Section 170 d. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)) is amended to read as follows:

"d. (1)(A) In addition to any other authority the Secretary of Energy (in this section referred to as the 'Secretary') may have, the Secretary shall, until August 1, 1997, enter into agreements of indemnification with contractors of the Department of Energy for the construction or operation of production or utilization facilities or other activities under contracts for the benefit of the United States involving activities under the risk of public liability for a substantial nuclear incident or precautionary evacuation.

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"(B)(i) The requirement in subparagraph (A) to enter into agreements of indemnification with contractors shall include contracts entered into by the Secretary for the purpose of carrying out such activities as the Secretary is authorized to undertake, under this Act or any other law, involving the storage, disposal, or transportation of, or research and development on, spent nuclear fuel, high-level radioactive waste, or transuranic waste, activities authorized to be carried out under the Waste Isolation Pilot Project under section 213 of Public Law 96-164, or the construction or operation of any storage or disposal site or facility. For all such activities, indemnification under subparagraph (A) shall be the exclusive means of indemnification under this section.

"(ii) For the purpose of compensating public liability claims, as defined in section 11 w., arising out of activities involving the storage or disposal of spent nuclear fuel, high-level radioactive waste, or transuranic waste produced as a result of the generation of electricity in a civilian nuclear power reactor, including the transportation of such materials to a storage or disposal site or facility and the construction or operation of any such site or facility, the Secretary shall make available funds, in an amount not to exceed the maximum amount of financial protection required of licensees under subsection a., from the Nuclear Waste Fund established in section 302 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222).

"(iii) Public liability claims arising out of activities involving the storage, disposal, or transportation of, or research and development on, spent nuclear fuel, high-level radioactive waste, or transuranic waste, not specified in clause (ii), activities authorized to be carried out under the Waste Isolation Pilot Project under section 213 of Public Law 96-164, or the construction or operation of any storage or disposal site or facility, shall be compensated in accordance with the provisions of this Act and from the same source of funds applicable to all other contractors indemnified under this subsection.

"(iv)(I) In the event of a nuclear incident that arises out of, results from, or occurs in the course of, activities undertaken by the Secretary in connection with the storage, disposal, or transportation of, or research and development on, spent nuclear fuel, high-level radioactive waste, or transuranic waste, activities authorized to be carried out under the Waste Isolation Pilot Project under section 213 of Public Law 96-164, or the construction or operation of any storage or disposal site or facility, the Secretary shall determine the extent to which such incident involves materials produced as a result of the generation of electricity in a civilian nuclear power reactor, or materials resulting from other activities, or both, and based upon such determination, render a decision as to the appropriate source of funds, in accordance with clauses (ii) and (iii), to be used in compensating public liability claims.

"(II) The funds to be used to compensate public liability claims under this subparagraph shall be provided in a manner and in such amounts as are appropriate to ensure that the funds necessary to compensate such claims are shared on a pro rata basis, in accordance with the determination rendered under subclause (I). The decision on the sources of such funds shall be final and conclusive. Not later than 90 days after the date of the enactment of the Price-Anderson Amendments Act of 1986, the Secretary shall promulgate standards and regulations for making the determinations required under this subparagraph.

"(2) In agreements of indemnification entered into under paragraph (1), the Secretary may require the contractor to provide and maintain financial protection of such a type and in such amounts as the Secretary shall determine to be appropriate to cover public liability arising out of or in connection with the contractual activity, and shall indemnify the persons indemnified against such claims above the amount of the financial protection required, to the full extent of the potential aggregate liability of the contractor, excluding costs of investigating and settling claims and defending suits for damage in the aggregate for all persons indemnified in connection with such contract and for each nuclear incident. The amount of indemnity shall be reduced by the amount of the financial protection that the Secretary requires of the contractor.

"(3) Notwithstanding paragraph (2), if the maximum amount of financial protection requried of licensees under subsection a. is increased by the Commission, the amount of indemnity, together with any financial protection required of the contractor, shall at all times remain equal to or greater than the maximum amount of financial protection required of licensees under subsection a. The amount of indemnity provided contractors under this subsection shall not, at any time, be reduced in the event that the maximum amount of financial protection required of licensees is reduced.

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"(4) In the case of nuclear incidents occurring outside the United States, the amount of the indemnity provided by the Secretary under this subsection shall not exceed $100,000,000.

"(5) The provisions of this subsection may be applicable to lump sum as well as cost type contracts and to contracts and projects financed in whole or in part by the Secretary.

"(6) A contractor with whom an agreement of indemnification has been executed and who is engaged in activities connected with the underground detonation of a nuclear explosive device shall be liable, to the extent so indemnified under this section, for injuries or damage sustained as a result of such detonation in the same manner and to the same extent as would a private person acting as principal, and no immunity or defense founded in the Federal, State, or municipal character of the contractor or of the work to be performed under the contract shall be effective to bar such liability.

"(7) Indemnification agreements entered into under paragraph (1) shall include reimbursement for costs of precautionary evacuations ordered by State or local officials if such evacuations are determined to be reasonable—

"(A) by the Secretary of Energy prior to the evacuation,

"(B) by the Secretary of Energy subsequent to the evacuation, but not later than 60 days after the issuance of the evacuation order; or

"(C) if the Secretary of Energy does not make a determination of reasonableness under subparagraph (B) within 60 days, by a panel of 3 members (1 appointed by the Nuclear Regulatory Commission, 1 appointed by the Director of the Federal Emergency Management Agency, and 1 appointed by the Governor of the State (or for any State without a Governor, the chief executive officer) in which the precautionary evacuation took place) not later than 60 days after the convening of such panel."

(b) LIABILITY FOR NONCONTRACTUAL ACTIVITIES OF SECRETARY OF ENERGY.—

(1) Section 11 s. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(s)) is amended by adding at the end the following new sentence: "For purposes of activities that the Secretary of Energy is authorized or directed to undertake, under this Act or any other law, that involve the risk of public liability for a substantial nuclear incident as a result of the storage, disposal, or transportation of, or research and development on, spent nuclear fuel, high-level radioactive waste, or transuranic waste, activities authorized to be carried out under the Waste Isolation Pilot Project under section 213 of Public Law 96-164, or the construction or operation of any storage or disposal site or facility, the Secretary shall, to the extent that such activities are not undertaken by contract, be considered as if the Secretary were a contractor with whom and indemnity agreement has been entered into under section 170 d.".

(2) Section 11 t. (1) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(t)(1)) is amended by inserting after "and any other person" the following: ", as, defined in subsection s.,".

(c) DEFINITIONS.—Section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014) is amended by adding at the end the following new subsections:

"dd. The terms 'high-level radioactive waste' and 'spent nuclear fuel' have the meanings given such terms in section 2 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101).

"ee. The term 'transuranic waste' means material contaminated with elements that have an atomic number greater than 92, including neptunium, plutonium, americium, and curium, and that are in concentrations greater than 10 nanocuries per gram, or in such other concentrations as the Nuclear Regulatory Commission may prescribe to protect the public health and safety.".

SEC. 5. PRECAUTIONARY EVACUATIONS.

(a) COSTS INCURRED BY STATE GOVERNMENTS.—Section 11 w. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(w)) is amended by inserting after "nuclear incident" the first place it appears the following: "or precautionary evacuation (including all costs incurred by a State, or a political subdivision of a State, in the course of responding to a nuclear incident or a precautionary evacuation)".

(b) DEFINITION.—Section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014), as previously amended by this Act, is further amended by adding at the end the following new subsection:

"ff. The term 'precautionary evacuation' means an evacuation of the public within a specified area near a nuclear facility, or the transportation route in the case of an accident involving transportation of source material, special nuclear material, byproduct material, high-level radioactive waste, spent nuclear fuel, or trans-

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uranic waste (including such material that is illegally diverted from its intended place of confinement) to or from a production or utilization facility, if the evacuation is—

"(1) the result of any event that is not classified as a nuclear incident but that poses the threat of a nuclear incident and causes an evacuation; and

"(2) ordered by an official of a State or a political subdivision of a State, who is authorized by State law to order such an evacuation.".

SEC. 6. AGGREGATE LIABILITY FOR SINGLE NUCLEAR INCIDENT.

Section 170 e. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(e)) is amended to read as follows:

"e. (1) The aggregate liability for a single nuclear incident of persons indemnified (other than persons indemnified under subsection d. (1)(B)), excluding the costs of investigating and settling claims and defending suits for damage, shall not exceed—

"(A) in the case of facilities designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more, and in the case of contractors with whom the Secretary has entered into an agreement of indemnification under subsection d.—

"(i) the maximum amount of financial protection required of such facilities under subsection b.; or

"(ii) in the case of such contractors, any higher amount of indemnity and financial protection that is required under paragraphs (2) and (3) of subsection d.; and

"(B) in the case of all other licensees of the Commission required to maintain financial protection under this section—

"(i) $500,000,000, together with the amount of financial protection required of the licensee; or

"(ii) if the amount of financial protection required of the licensee exceeds $60,000,000, $560,000,000 or the amount of financial protection required of the licensee, whichever amount is more.

"(2) In the event of a nuclear incident involving damages in excess of the amount of aggregate liability under paragraph (1), and in the event of a nuclear incident involving persons indemnified under subsection d. (1)(B) in which claims exceed the maximum amount of funds available under subsection d. (1)(B)(ii), the Congress will thoroughly review the particular incident in accordance with subsection i. and take whatever action is determined to be necessary (including approval of appropriate compensation plans and appropriation of funds) to provide and prompt compensation to the public for all public liability claims resulting from a disaster of such magnitude.

"(3) No provision of paragraph (1) may be construed to preclude the Congress from enacting a revenue measure, applicable to licensees of the Commission required to maintain financial protection pursuant to subsection b., to fund any action undertaken pursuant to paragraph (2).

"(4) With respect to any nuclear incident occurring outside of the United States to which an agreement of indemnification entered into under the provisions of subsection d. is applicable, such aggregate liability shall not exceed the amount of $100,000,000, together with the amount of financial protection required of the contractor.".

SEC. 7. COMPENSATION PLANS

Section 170 i. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(i)) is amended to read as follows:

"i. (1) After any nuclear incident involving damages that are likely to exceed the amount of aggregate liability under subsection e. (1) or the amount of funds available under subsection d. (1)(B)(ii), the Secretary or the Commission, as appropriate, shall—

"(A) make a survey of the causes and extent of damage; and

"(B) expeditiously submit a report setting forth the results of such survey to the Congress, to the Representatives of the affected districts, to the Senators of the affected States, and (except for information that will cause serious damage to the national defense of the United States) to the public, to the parties involved, and to the courts.

"(2) Not later than 90 days after any determination by a court, pursuant to subsection o., that the public liability from a single nuclear incident may exceed the amount of aggregate liability under subsection e. (1) or the amount of funds available under subsection d. (a)(B)(ii), the President shall submit to the Congress—

"(A) an estimate of the aggregate dollar value of personal injuries and property damage that arises from the nuclear incident and exceeds the amount of ag-

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gregate liability under subsection e. (1) or the amount of funds available under subsection d. (1)(B)(ii);

"(B) recommendations for additional sources of funds to pay claims exceeding the amount of aggregate liability under subsection e. (1) or the amount of funds available under subsection d. (1)(B)(ii), which recommendations shall consider a broad range of possible sources of funds (including possible revenue measures on the sector of the economy, or on any other class, to which such revenue measures might be applied); and

"(C) 1 or more compensation plans, containing a recommendation or recommendations as to the relief to be provided, including any recommendations that funds be allocated or set aside for the repayment of claims that may arise as a result of latent injuries that may not be discovered until a later date.".

SEC. 8. DATE OF EXEMPTION FROM FINANCIAL PROTECTION REQUIREMENT.

Section 170 k. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(k)) is amended by striking "August 1, 1987" each place it appears and inserting "August 1, 1997".

SEC. 9. PRESIDENTIAL COMMISSION ON CATASTROPHIC NUCLEAR ACCIDENTS.

Section 170 of the Atomic Energy Act of 1954 (42 U.S.C. 2210) is amended by striking subsection 1. and inserting the following:

"1. (1) Not later than 90 days after the date of the enactment of the Price-Anderson Amendments Act of 1986, the President shall establish a commission (in this subsection referred to as the 'study commission') in accordance with the Federal Advisory Committee Act (5 U.S.C. App.) to study means of fully compensating victims of a catastrophic nuclear accident that exceeds the amount of aggregate liability under subsection e. (1) or the amount of funds available under subsection d. (1)(B)(ii).

"(2)(A) The study commission shall consist of not less than 7 and not more than 11 members, who—

"(i) shall be appointed by the President; and

"(ii) shall be representative of a broad range of views and interests.

"(B) The members of the study commission shall be appointed in a manner that ensures that not more than a mere majority of the members are of the same political party.

"(C) Each member of the study commission shall hold office until the termination of the study commission, but may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

"(D) Any vacancy in the study commission shall be filled in the manner in which the original appointment was made.

"(E) The President shall designate 1 of the members of the study commission as chairperson, to serve at the pleasure of the President.

"(3) The study commission shall conduct a comprehensive study of appropriate means of fully compensating victims of a catastrophic nuclear accident that exceeds the amount of aggregate liability under subsection e. (1), and shall submit to the Congress a final report setting forth—

"(A) recommendations for any changes in the laws and rules governing the liability or civil procedures that are necessary for the equitable, prompt, and efficient resolution and payment of all valid damage claims, including the advisability of adjudicating public liability claims through an administrative agency instead of the judicial system;

"(B) recommendations for any standards or procedures that are necessary to establish priorities for the hearing, resolution, and payment of claims when awards are likely to exceed the amount of funds available within a specific time period; and

"(C) recommendations for any special standards or procedures necessary to decide and pay claims for latent injuries caused by the nuclear incident.

"(4)(A) The chairperson of the study commission may appoint and fix the compensation of a staff of such persons as may be necessary to discharge the responsibilities of the study commission, subject to the applicable provisions of the Federal Advisory Committee Act (5 U.S.C. App.) and title 5, United States Code.

"(B) To the extent permitted by law and requested by the chairperson of the study commission, the Administrator of General Services shall provide the study commission with necessary administrative services, facilities, and support on a reimbursable basis.

"(C) The Attorney General, the Secretary of Health and Human Services, and the Director of the Federal Emergency Management Agency shall, to the extent permitted by law and subject to the availability of funds, provide the study commission with such facilities, support, funds and services, including staff, as may be necessary for the effective performance of the functions of the study commission.

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"(D) The study commission may request any Executive agency to furnish such information, advice, or assistance as it determines to be necessary to carry out its functions. Each such agency is directed, to the extent permitted by law, to furnish such information, advice or assistance upon request by the chairperson of the study commission.

"(E) Each member of the study commission may receive compensation at the maximum rate now or hereafter prescribed by law for each day such member is engaged in the work of the study commission. Each member may also receive travel expenses, includng per diem in lieu of subsistence under sections 5702 and 5703 of title 5, United States Code.

"(F) The functions of the President under the Federal Advisory Committee act (5 U.S.C. App.) that are applicable to the study commission, except the function of reporting annually to the Congress, shall be performed by the Administrator of General Services.

"(5) The final report required in paragraph (3) shall be submitted to the Congress not later than the expiration of the 2-year period beginning on the date of the enactment of the Price-Anderson Amendments Act of 1986.

"(6) The study commission shall terminate upon the expiration of the 2-month period beginning on the date on which the final report required in paragraph (3) is submitted.".

SEC. 10. WAIVER OF DEFENSES.

(a) STATUTE OF LIMITATIONS.—Section 170 n. (1) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(n)(1)) is amended in clause (iii) of the first sentence by striking the following: ", but in no event more than twenty years after the date of the nuclear incident".

(b) APPLICABILITY.—Section 170 n. (1) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(n)(1)) is amended—

(1) by redesignating subparagraphs (a), (b), and (c) as subparagraphs (A), (B), and (C), respectively;

(2) by striking "or" at the end of subparagraphs (A) and (B); and

(3) by inserting after subparagraph (C) the following new subparagraphs:

"(D) arises out of, results from, or occurs in the course of, the construction, possession, or operation of any facility licensed under section 53, 63, or 81, for which the Commission has imposed as a condition of the license a requirement that the licensee have and maintain financial protection under subsection a., "(E) arises out of, results from, or occurs in the course of, transportation of source material, byproduct material, or special nuclear material to or from any facility licensed under section 53, 63, or 81, for which the Commission has imposed as a condition of the license a requirement that the licensee have and maintain financial protection under subsection a., or

"(F) arises out of, results from, or occurs in the course of, activities undertaken by the Secretary, including activities undertaken by contract, in connection with the storage or disposal of, or research and development on, high-level radioactive waste, spent nuclear fuel, or transuranic waste, including the transportation of such materials to a storage or disposal site or facility and the construction or operation of any such site or facility,".

SEC. 11. JUDICIAL REVIEW OF CLAIMS ARISING OUT OF A NUCLEAR INCIDENT.

(a) CONSOLIDATION OF CLAIMS.—Section 170 n. (2) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(n)(2)) is amended—

(1) in the first sentence—

(A) by striking "an extraordinary nuclear occurrence" each place it appears and inserting "a nuclear incident"; and

(B) by striking "the extraordinary nuclear occurrence" each place it appears and inserting "the nuclear incident";

(2) in the second sentence, by inserting after "court" the first place it appears the following: "(including any such action pending on the date of the enactment of the Price-Anderson Amendments Act of 1986)"; and

(3) by adding at the end the following new sentence: "In any action that is or becomes removable pursuant to this paragraph, a petition for removal shall be filed within the period provided in section 1446 of title 28, United States Code, or within the 30-day period beginning on the date of the enactment of the Price-Anderson Amendments Act of 1986, whichever occurs later.".

(b) DEFINITION OF PUBLIC LIABILITY ACTION.—Section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014), as previously amended by this Act, is further amended by adding at the end the following new subsection:

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"gg. The term 'public liability action', as used in section 170, means any suit asserting public liability. A public liability action shall be deemed to be an action arising under section 170, and the substantive rules for decision in such action shall be derived from the law of the State in which the nuclear incident involved occurs, unless such law is inconsistent with the provisions of such section.".

(c) SPECIAL CASELOAD MANAGEMENT PANEL.—Section 170 n. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(n)) is amended by adding at the end the following new paragraph:

"(3)(A) Following any nuclear incident, the chief judge of the United States district court having jurisdiction under paragraph (2) with respect to public liability actions (or the judicial council of the judicial circuit in which the nuclear incident occurs) may appoint a special caseload management panel (in this paragraph referred to as the 'management panel') to coordinate and assign (but not necessarily hear themselves) cases rising out of the nuclear incident, if—

"(i) the United States district court having jurisdiction under paragraph (2) determines that the aggregate amount of public liability is likely to exceed the amount of primary financial protection available under subsection b, (or an equivalent amount in the case of a contractor indemnified under subsection d.); or

"(ii) the chief judge of the United States district court (or the judicial council of the judicial circuit) determines that cases arising out of the nuclear incident will have an unusual impact on the work of the court.

"(B)(i) Each management panel shall consist only of members who are United States district judges or circuit judges.

"(ii) Members of a management panel may include any United States district judge or circuit judge of another district court or court of appeals, if the chief judge of such other district court or court of appeals consents to such assignment.

"(C) It shall be the function of each management panel—

"(i) to consolidate related or similar claims for hearing or trial;

"(ii) to establish priorities for the handling of different classes of cases;

"(iii) to assign cases to a particular judge or special master;

"(iv) to appoint special masters to hear particular types of cases, or particular elements or procedural steps of cases;

"(v) to promulgate special rules of court, not inconsistent with the Federal Rules of Civil Procedure, to expedite cases or allow more equitable consideration of claims;

"(vi) to implement such other measures, consistent with existing law and the Federal Rules of Civil Procedure, as will encourage the equitable, prompt, and efficient resolution of cases arising out of the nuclear incident; and

"(vii) to assemble and submit to the President such data, available to the court, as may be useful in estimating the aggregate damages from the nuclear incident.".

SEC. 12. REPORTS TO CONGRESS BY NUCLEAR REGULATORY COMMISSION AND DEPARTMENT OF ENERGY.

Section 170 p. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(p)) is amended—

"(1) by inserting "(1)" after the subsection designation;

"(2) by striking "shall submit to the Congress by August 1, 1983, a detailed report", and inserting the following: "and the Secretary shall submit to the Congress by August 1, 1993, detailed reports"; and

"(3) by adding at the end the following new paragraph:

"(2) Not later than April 1 of each year, the Commission and the Secretary shall each submit an annual report to the Congress setting forth the activities under this section during the preceding calendar year.".

SEC. 13. TECHNICAL AND CONFORMING AMENDMENTS.

(a) REFERENCES TO NUCLEAR REGULATORY COMMISSION.—

(1) Section 11 q. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(q)) is amended by striking "Commission" each place it appears and inserting "Nuclear Regulatory Commission".

(2) Section 170 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(a)) is amended by striking "Commission" in the first sentence and inserting the following: "Nuclear Regulatory Commission (in this section referred to as the 'Commission')".

(b) REFERENCES TO SECRETARY OF ENERGY.—

(1) Subsections j. and m. of section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014) are amended by striking "Commission" each place it appears and

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inserting the following: "Nuclear Regulatory Commission or the Secretary of Energy, as appropriate,".

(2) Section 11 t. (2) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(t)(2)) is amended by striking "Commission" and inserting "Secretary of Energy".

(3) Section 170 f. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(f)) is amended by inserting after "Commission" the first 2 places it appears the following: "or the Secretary, as appropriate,".

(4) Subsections g., h., j., and m. of section 170 of the Atomic Energy Act of 1954 (42 U.S.C. 2210) are amended by inserting after "Commission" each place it appears the following: "or the Secretary, as appropriate,".

(5) Section 170 n. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(n)) is amended—

(A) in paragraph (1)—

(i) by striking "Commission" in subparagraph (C) and inserting "Department of Energy"; and

(ii) by inserting after "Commission" the second place it appears the following: "or the Secretary, as appropriate,"; and

(B) in paragraph (2), by inserting after "Commission" the following: "or the Secretary, as appropriate".

(6) Section 170 o. (3) of the Atomic Energy Act of 1954 (42 U.S.C.2210(o)(3)) is amended—

(A) by inserting after Commission the first place it appears the following: "or the Secretary, as appropriate,"; and

(B) by inserting after "Commission" the second place it appears the following: "or the Secretary, as appropriate".

(c) REFERENCES TO JOINT COMMITTEE ON ATOMIC ENERGY.—Section 170 o. (4) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(o)(4)) is amended by striking "Joint Committee" and inserting "Congress".

(d) REFERENCES TO REVISED STATUTES.—

(1) Section 170 g. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(g)) is amended by inserting "(41 U.S.C. 5)" after "Statutes".

(2) Section 170 j. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(j)) is amended by striking "section 3679 of the Revised Statutes, as amended" and inserting the following: "sections 1341, 1342, 1349, 1350, and 1351, and subchapter II of chapter 15, of title 31, United States Code".

(e) INTERNAL CROSS-REFERENCES.—

(1) Section 11 q. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(q)) is amended by striking "subsection" each place is appears and inserting "section".

(2) Section 11 t. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(t)) is amended by striking "subsection" each place is appears and inserting "section".

(3) Section 11 w. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(w)) is amended by striking "subsections 170 a., c., and k." and inserting "subsections a., c., and k. of section 170".

(4) Section 170 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(a)) is amended—

(A) in the first sentence, by striking "subsection 2 i. of the Atomic Energy Act of 1954, as amended" and inserting "section 2 i.";

(B) in the first sentence, by striking "subsection 170 b." and inserting "subsection b."; and

(C) in the second sentence, by striking "subsection 170 c." and inserting "subsection c.".

(5) Section 170 k. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(k)) is amended in the first sentence by striking "subsection 170 a." and inserting "subsection a."

(6) Section 170 n. (1) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(n)(1)) is amended in the last sentence by striking "subsection 170 e." and inserting "subsection e."

(7) Section 170 o. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(o)) is amended—

(A) in the matter preceding paragraph (1) by striking "subsection 170 e."; and inserting "subsection e."

(B) in paragraph (2), by striking "subparagraph (3) of this subsection (o)" and inserting "paragraph (3)"; and

(C) in paragraph (4), by striking "subsection 170 i. of this Act" and inserting "subsection i.".

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SEC. 14. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this Act shall become effective on August 1, 1987, and shall be applicable with respect to nuclear incidents occurring on or after such date.

(b) EXCEPTIONS.—

(1) The amendments made by sections 9 and 11 shall become effective on the date of the enactment of this Act.

(2) The amendments made by section 11 shall be applicable with respect to nuclear incidents occurring on any date.

I. PURPOSE AND SUMMARY OF H.R. 3653

The purpose of the bill, as reported by the Committee on Interior and Insular Affairs, is to extend and amend the Price-Anderson Act, section 170 of the Atomic Energy Act of 1954, which provides public liability coverage for licensees of the Nuclear Regulatory Commission (NRC) and contractors of the Department of Energy (DOE). The bill extends the authority of the NRC and DOE to enter into indemnity agreements with their licensees and contractors, respectively, for an additional ten years. The bill also increases the liability of commercial nuclear power plants and the DOE under indemnity agreements with its contractors for public liability resulting from a nuclear accident, strengthens the congressional commitment to compensate the public fully and promptly for damages in excess of the statutory limitations on liability, and obligates the Federal Government to fully compensate the public for damages resulting from activities involving nuclear waste.

II. BACKGROUND

Purpose of the current act

Congress enacted the Price-Anderson Act in 1957:

(1) to ensure that adequate funds would be available to compensate the public for injuries resulting from nuclear activities; and,

(2) to remove the threat of unlimited liability for a nuclear accident which was deterring private industry from participating in nuclear activities.

Summary of the current act

To ensure the availability of adequate compensation funds, the Act authorizes the NRC (a) to require its licensees to maintain financial protection to cover public liability claims and (b) to indemnify licensees from public liability in amount up to $500 million.

The Act requires large commercial power plants (those that have a rated capacity of 100,000 electrical kilowatts or more) to maintain two tiers of financial protection.

The first tier, knows as "primary financial protection," consists of commercial insurance or self-insurance in an amount equal to the maximum amount of commercial insurance available at reasonable cost (currently $160 million). The second tier is achieved through participation in an industry-wide self-insurance program. Participants in this program—all operators of large commercial power reactors—are obligated to pay a deferred premium of up to $5 million per nuclear reactor per accident in the event of an accident at any nuclear power plant that results in public liability ex-

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ceeding the first tier of financial protection. If the 101 reactors now licensed each were required to pay the maximum $5 million deferred premium, the first and second tiers together would result in a fund of $665 million.

The Act gives the NRC discretion to require other licensees to maintain first-tier financial protection in varioius amounts or not at all based upon the risk presented by the licensed activity. NRC licensees other than large commercial power plants (such as university research reactors, other non-power reactors, and small power reactors) are not required to participate in the second-tier self-insurance program.

The Act also requires the NRC to indemnify all licensees for which it requires financial protection of less than $560 million from public liability in excess of the amount of financial protection, up to $500 million. Nonprofit educational institutions licensed to operate reactors are exempt from the financial protection requirement but are indemnified against claims over $250,000 up to $500 million. Federal agencies licensed to operate nuclear reactors are also exempt from the financial protection requirement and are indemnified for all claims up to $500 million.

In addition, the Act authorizes, but does not require, the DOE to indemnify private entities performing nuclear activities under contract for DOE in an amount up to $500 million. DOE is authorized to require financial protection of its contractors, but has not as a matter of policy.

To remove the deterrent to private participation in nuclear activities, the Act limits the liability of persons indemnified by NRC or DOE. The liability of large commercial power plants is limited to the aggregate of the first and second tiers. With 101 large commercials power plants now participating in the second-tier program, the aggregate liability of such plants is currently limited to $665 million. The liability of other NRC licensees and DOE contractors is limited to the sum of $500 million plus any financial protection of the licensee up to $560 million.

In the event that damages from a nuclear accident exceed the statutory limitation on liability, the Act states that Congress will review the incident and "take whatever action is deemed appropriate to protect the public from the consequences of a disaster of such magnitude." Thus, while the limitation on liability would bar legal recourse against persons indemnified under the Act for damages in excess of the limit, it was not intended to bar further relief of the public.

The financial protection arrangements, indemnities, and liability limitations cover any person who may be liable for damages from a nuclear accident, not just the licensee or contractor. Thus, if an accident results from the action of an architect, engineer, manufacturer of a reactor component, or even some unrelated party, the public injuries stemming from the accident would be covered by the licensee's insurance the deferred premium pool, or the federal indemnity. This "omnibus coverage" feature effectively channels liability for the accident to the licensee or contractor even though others would be liable under ordinary tort law principles. The advantage to the public of "omnibus coverage" is that a victim's ability to obtain compensation is not dependent upon the victim being

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able to establish the legal liability of the person who actually caused it. Victims need only look to the licensee or contractor, and the financial protection or federal indemnity he maintains, for compensation.

Liability is determined under applicable state tort law. However, to further facilitate compensation of victims of a major nuclear accident, the Act requires persons indemnified thereunder to waive certain legal defenses in the event of an "extraodinary nuclear occurrence," that is, a large-scale accident involving substantial offsite radiological contamination and damage to persons and property. The defenses waived include defenses based upon the due care of persons indemnified, charitable or sovereign immunity, and certain state statutes of limitation. In addition, the Act would consolidate in a single federal court public liability claims arising from an extraodinary nuclear occurrence.

Licensees and contractors covered

Currently, there are 101 large commercial power plants and approximately 50 university research reactors, 8 federal agency reactors, 16 non-power reactors, and 5 small power reactors licensed by the NRC and covered by the Price-Anderson Act. In addition, there are over 100 DOE contracts containing Price-Anderson protection. They cover approximately 50 prime contractors and 70,000 subcontractors and lower-tier supplies.

Claims history

The major test of the Price-Anderson system to date involved the Three Mile Island accident in March 1979. Insured losses and related expenses resulting from the Three Mile Island accident have totaled less than $48 million, all of which has been covered by first-tier insurance. Insured losses and related expenses arising from all other civilian activities have totaled approximately $4.5 million. In addition, payments for claims resulting from activities conducted under contract with DOE or the Atomic Energy Commission totaled $271,000.

III. Need for Legislation

As enacted in 1957, the Price-Anderson Act authorized the Atomic Energy Commission (the predecessor of the NRC and DOE) to enter into indemnity agreements with its licensees and contractors only until August 1, 1967. In 1965 and again in 1975, Congress extended this authority for successive ten-year periods. Unless extended again, however, NRC and DOE's authority to enter into new indemnity agreements and to limit the liability of future licensees and contractors will expire on August 1, 1987. Expiration of the NRC's indemnification authority would result in two different liability systems. The NRC has taken the position that activities licensed (or granted a construction permit by August 1, 1987) would continue to be covered by the limitation on liability, waivers of defenses, and financial protection requirements established by the existing Act. Activities licensed after that date would not be subject to the limitation on liability, the waivers of defenses, or, in the NRC's view, the financial protection requirements of existing

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law. Thus, in the event of a nuclear accident at a facility licensed after August 1, 1987, liability would have to be established without the benefit of the Act's waivers of defenses, and the public's ability to obtain compensation could be limited to the amount of insurance and assets of the individual licensee having the accident. This could prevent the public from recovering full compensation for damages resulting from an accident at such a facility.

Similarly, expiration of DOE's indemnification authority could have a profound effect on the Department's nuclear operations conducted through private contractors. Activities conducted pursuant to contracts executed by August 1, 1987 would continue to be covered by the existing Price-Anderson system. Unlike NRC licenses which may extend for up to 40 years, however, DOE contracts commonly expire within 5 years of execution and contracts executed after August 1, 1987 would not be protected by federal indemnification. Contracts for operation of the Los Alamos National Laboratory, the Lawrence Berkley and Lawrence Livermore National Laboratories, and the Hanford, Washington site, for example, expire on September 30, 1987 and renewals would not be eligible for Price-Anderson indemnification. Although DOE believes it could indemnify future contractors through other authority, these alternatives pose certain disadvantages compared with Price-Anderson indemnification. For example, the "omnibus" coverage of subcontractors and lower-tier suppliers, the waiver of defenses, and limitation of liability provided by the Price-Anderson would not apply.

The current Act required both NRC and DOE to report to Congress by August 1, 1983 whether the Act needed to be continued, modified, or repealed. Both agencies concluded that the Act should be extended though both recommended that certain modifications be made. Although the NRC was unable to determine whether failure to extend the Act would foreclose construction of additional nuclear power plants, the Commission did conclude that failure to extend the Act would deny the public the benefits of prompt availability and equitable distribution of compensation funds with respect to any plants constructed after August 1, 1987. The NRC recommended that the Act be extended, but that the present absolute limitation on liability be replaced with an annual limitation. The annual limitation would permit assessment of deferred premiums each year until all claims are paid. DOE concluded that extension of the Act was essential for private contractors to be willing to perform work on the Department's nuclear weapons, production, and research and development programs.

IV. Committee Action

Two bills to amend the Price-Anderson Act were referred to the Committee on Interior and Insular Affairs during the 98th Congress. The Subcommittee on Energy and the Environment held a hearing on the bills on June 11, 1984.

Four bills to amend the Act were referred to the Committee early in the First Session of the 99th Congress. The Subcommittee on Energy and the Environment held hearings on the bills on June 4 and 6 and July 8, 1985.

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On October 30, 1985, Chairman Udall introduced H.R. 3653. The Subcommittee agreed to use H.R. 3653 as the mark-up vehicle for consideration of amendments to the Price-Anderson Act. The Subcommittee met in open session to consider H.R. 3653 on October 29, November 19, December 3 and December 10, 1985. On December 10, 1985, the Subcommittee favorably reported H.R. 3653 as amended to the full Committee.

On April 23, April 30, and May 21, 1986, the full Committee considered and further amended the Subcommittee amendment to H.R. 3653. On May 21, 1986, the Committee, by voice vote, favorably reported the bill, with an amendment, to the House.

V. Discussion of Issues

A. LIABILITY OF LARGE COMMERCIAL POWER PLANTS

The Committee amendment to H.R. 3653 increases the amount of funds available to compensate victims in the event of a nuclear incident at a large commercial power reactor from $665 million to $6,563 million (assuming 101 reactors participating in the second-tier, deferred premium program). As under existing law, the fund would be provided through two tiers of financial protection.

First tier

The current Act requires large commercial power reactors to maintain primary financial protection in an amount equal to the maximum amount of commercial liability insurance available at reasonable cost and on reasonable terms. Currently, the maximum amount of commercial liability insurance reasonably available is $160 million.

The Committee amendment to H.R. 3653 retains the existing requirement but adds a new requirement that large commercial power reactors maintain not less than $200 million of primary financial protection. The Committee is confident that the nuclear insurance pools will be able to meet this new requirement by August 1, 1987 when it takes effect. If the insurance pools are unable to provide $200 million in liability insurance by August 1, 1987 or anytime thereafter, large commercial power reactors can meet the requirement through private contractual indemnities, self-insurance, other proof of financial responsibility, or a combination of such measures. As the maximum amount of reasonably available commercial liability insurance increases above $200 million, the Committee amendment requires large commercial power reactors to maintain financial protection in the higher amount.

The Committee notes that both the insurance agreements covering losses in excess of primary financial protection and the government indemnity agreements are designed to "drop down" to fill any gaps between the amount of primary financial protection required by the NRC and such lesser amounts that may be available under a commercial insurance policy as a result of prior payments under the policy. The Committee believes that such gaps in coverage are unlikely because the NRC conditions operation of nuclear reactors on the availability of the full amount of required financial protection. Nonetheless, in the unlikely event of any gap in cover-

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age between the amount of primary financial protection funds available and the required amount, the Committee intends that private excess loss and government indemnity coverage would continue to "drop down" to pay claims, notwithstanding the $200 million floor on the primary financial protection added by section 2(a) of the Committee amendment.

Second tier

The current Act requires each large commercial power reactor to participate in a deferred premium program in which all participants would be assessed a deferred premium of not less than $2 million and not more than $5 million in the event of a nuclear accident which exceeds or appears likely to exceed the amount of first-tier financial protection required of large commercial power reactors. If the maximum deferred premium were assessed against each of the 101 reactors that now participate, the program would generate a fund of $505 million. The maximum amount will increase by $5 million with each new large commercial power reactor granted an operating license, and will decrease by that amount with each reactor whose license is terminated.

The Committee amendment to H.R. 3653 will eliminate the minimum amount and increase the maximum amount of the deferred premium from $5 million to $63 million per accident. If the maximum deferred premium were assessed against each of the 101 reactors that now participate in the program, the program would generate a fund of $6,363 million. The maximum amount will increase by $63 million with each new large commercial reactor granted an operating license, and will decrease by that amount with each reactor whose license is terminated.

In addition to prescribing a maximum amount for the deferred premium that may be assessed with respect to each nuclear incident, the Committee amendment to H.R. 3653 also limits to $10 million the amount of deferred premium that can be assessed against each reactor with respect to a single nuclear incident in any one year. The Committee concluded, based upon the 1983 report of the Nuclear Regulatory Commission (NUREG-0957), that an annual $10 million assessment would not impose undue financial strain upon the utilities operating large commercial power reactors. In addition, the Committee noted that an annual $10 million assessment would represent less than 3 percent (and in many cases less than 1 or 2 percent) of the utility's annual income from ratepayers.

Throughout the Committee's consideration of H.R. 3653 a consensus existed that the limitation on liability should be increased. The Committee was mindful that the original limitation was arbitrarily determined and had little relationship to the amount of claims likely to arise from a catastrophic accident. Even before enactment of the original Act in 1957, the Brookhaven National laboratory had concluded that a severe accident could cause as much as $7 billion of property damage alone. While the $560 million limitation was more than adequate to pay the approximately $41 million of claims that arose from the Three Mile Island accident, the Federal Insurance Administration estimated that a more severe accident at

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that plant could have resulted in $17 billion of off-site property losses.

From the outset of consideration of H.R. 3653, nuclear utilities supported a doubling of the deferred premiums, thereby increasing the limitation on liability to about $1 billion. Critics of this proposal argued that it would provide insufficient funds to fully compensate victims of a catastrophic accident. The Nuclear Regulatory Commission and various public interest groups, on the other hand, proposed replacing the current aggregate limitation on liability with an annual limitation that would permit assessment of deferred premiums indefinitely, until all liability claims are paid. Critics of this proposal argued that it would unfairly subject all nuclear utilities to unlimited liability for an accident that occurred at a plant operated by only one of them and would increase the cost of capital to all nuclear utilities even if no accident occurs.

As introduced, H.R. 3653 would have subjected utilities to an annual $10 million deferred premium for up to 10 years, increasing the aggregate limitation on liability to about $10 billion—as a compromise between the extreme of a $1 billion limitation and unlimited liability. The bill was amended, first by the Subcommittee to reduce the limitation on liability to about $2 billion, and then by the full Committee to increase the limitation to about $8 billion, before the Committee ultimately adopted a compromise limitation of about $6.5 billion.

The Committee believes the compromise limitation substantially increases the amount of funds available to compensate victims of a catastrophic accident and places a larger share of the financial risk of such an accident on the nuclear industry than existing law. At the same time, the Committee believes that the compromise limitation would not unduly affect nuclear utilities. The Committee noted that a $63 million assessment represents less than one-third of the $200 million that the average nuclear utility already pays in annual premiums over the 40-year life of a reactor to insure the plant itself against onsite damages. Similarly, a $63 million assessment represents only about half of the $120 million that the average nuclear utility already pays in nuclear waste disposal fees over the 40-year life of a reactor. Moreover, unlike these other premiums and fees which are already being paid, the $63 million deferred premium would only be imposed if there were a catastrophic nuclear accident that resulted in damages in excess of the primary financial protection.

Consistent with the NRC's indemnity agreements, the Committee intends that termination of a license would not affect the licensee's obligation to pay a deferred premium with respect to an accident that occurred while the licensee's indemnity agreement was in effect.

Borrowing authority

The Committee recognized that the establishment of an annual maximum that delays payment of the aggregate deferred premium for a period of years could result in adequate funds not being available to pay public liability claims when needed. Accordingly, the Committee took steps to strengthen and expand the NRC's existing obligation to pay public compensation in advance of the collection

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of deferred premiums from private industry if necessary for the protection of the public.

The current Act authorizes the NRC to establish measures to ensure that the deferred premiums will be paid when they are called for following a neclear incident. To prevent a potential gap between the public protection pledged and the funds that may actually be available from private industry following an accident, the current Act authorizes the NRC to guarantee payment of the deferred premiums if the funds are not forthcoming from private industry on a timely basis. Indemnity agreements implementing this authority permit the NRC to recover from the licensee payments made on its behalf.

The Committee amendment to H.R. 3653 establishes a mechanism by which the NRC may borrow the funds necessary to meet its obligation under current law to ensure the availability of deferred premiums. the amendment provides that, in the event the NRC is liable for deferred premiums under this obligation, the NRC must either request the Congress to appropirate sufficient funds to satisfy such payments or, to the extent approved in appropriation Acts, to issue Treasury obligations. The Committee intends that, in addition to permitting the NRC to pay a licensee's deferred premium in the event the licensee defaults on its obligation when due, the amended section 170b. (2) and (3) authorize the NRC to borrow from the Treasury up to the aggregate maximum deferred in advance of the year in which the annual installments are due. Thus, if deferred premiums of $63 million per reactor are needed to pay claims in the first year after an accident, but only $10 million per reactor is available under the annual maximum, the NRC could borrow the remaining $53 million per reactor from the Treasury. In subsequent years, as the licensees pay their annual assessments, the assessments would be used to pay principal and interest on the borrowed funds, up to the amount of the aggregate maximum deferred premium.

Limitation of liability

As under existing law, the Committee amendment to H.R. 3653 continues to limit the liability of large commercial power reactor licensees to the aggregate of the first and second tiers of financial protection requried. Increases in both the first and second tier requirements, however, would result in nearly a ten-fold incrase in the limitation on liability from $665 million to $6,563 million based upon the 101 large commercial power reactors now in operation. Moreover, as under existing law, the limit on liability would continue to rise as more commercial insurance becomes available or additional large commercial power reactors are licensed. Conversely, however, the limit ultimately may decrease as reactors are decommissioned and are no longer required to participate in the second tier deferred premium program.

B. LIABILITY OF OTHER NRC LICENSEES

The Committee amendment does not change the liability of NRC licensees other than large commercial power reactors. The liability system applicable to other licensees will continue to be as follows:

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Nonprofit educational institutions

Nonprofit educational institutions licensed to operate nuclear reactors will continue to be exempt from fianancial protection requirements, but will be eligible for an indemnity from liability in excess of $250,000, up to $500 millon. Liability will continue to be limited to $500 million.

Federal agencies

Federal agencies licensed to operate nuclear reactors will continue to be exempt from financial protection requirements, but will be eligible for an indemnity from all liability up to $500 million. Liability will continue to be limited to $500 million.

Other reactors

All reactor licensees other than large commercial power reactor licensees, nonprofit educational institutions, or federal agency licensees will continue to be required to maintain financial protection in amounts established by regulation based on the type, size, and location of the reactor and other factors.

The NRC must indemnify licensees required to maintain financial protection of less than $560 million against liability in excess of the required level of financial protection. The maximum amount of the indemnity will continue to be $500 million, reduced by the amount that the licensee's required financial protection exceeds $60 million. Liability will continue to be limited to either $500 million plus the amount of financial protection required or $560 million, if the amount of financial protection required exceeds $60 million.

Materials licensees

The NRC will continue to have authority, in its discretion, to require persons licensed to possess radioactive materials to maintain financial protection. To date, the only materials licensees the NRC has required to maintain financial protection are plutonium processing and fuel fabrication facilities.

Other licensees

Licensees not required to maintain financial protection are not eligible for a government indemnity and are not subject to a limitation on liability.

C. LIABILITY OF DOE CONTRACTORS FOR ACCIDENTS NOT INVOLVING NUCLEAR WASTE

The Committee amendment to H.R. 3653 increases the liability of DOE contractors for a nuclear incident arising from activities performed under contract for the DOE other than activities involving radioactive waste, from $500 million to the maximum amount of financial protection required of large commercial power reactors licensed by the NRC. Assuming there are 101 large commercial power reactors participating in the second-tier deferred premium program, the aggregate liability of the Federal Government for a nuclear incident arising from non-waste DOE contractor activities

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would be $6,563 million. The Federal Government will indemnify the contractor to the full extent of the contractor's liability.

In the past, Price-Anderson coverage of DOE contractor activities has not kept pace with the expanding coverage available for large commercial power reactors licensed by the NRC. The Committee amendment to H.R. 3653 would change this by increasing the aggregate liability for DOE contractors (other than those performing activities involving radioactive waste) to the maximum amount of financial protection required of large commercial power reactors. In view of the recommendations made in the 1983 DOE report on Price-Anderson coverage, which recognized the need for equivalency, and in light of the similar risk associated with either class of activity, the Committee determined that coverage for DOE contractor activities should be equivalent to that for NRC licensee activities. Thus, the DOE contractor indemnity will increase automatically as new nuclear power plants are licensed. However, in an effort to stabilize the coverage of DOE contractors regardless of any future reductions in NRC reactor licensee coverage that might result from a decline in the number of commercial nuclear power plants in operation, the bill provides that the federal indemnity for DOE contractors will not be reduced in the event that the financial protection required of NRC commercial reactor licensees is reduced.

Under the current Act, DOE's authority to indemnify contractors engaged in activities posing a risk of public liability for a substantial nuclear incident is discretionary. The Committee amendment to H.R. 3653 requires DOE to indemnify all such contractors.

Under the current Act, the maximum amount of the indemnity is $500 million. The Committee amendment requires DOE to indemnify the contractor to the full extent of the potential aggregate liability of the contractor.

The current Act authorizes DOE to require its contractors to maintain financial protection. As a matter of policy, however, DOE does not exercise this authority, because the cost of any private insurance required of the contractor would be passed on to the Government. The Committee amendment to H.R. 3653 does not affect either DOE's authority to require financial protection or its policy of not requiring financial protection.

D. LIABILITY OF DOE CONTRACTORS FOR ACCIDENT INVOLVING NUCLEAR WASTE

Although accidents involving nuclear waste are not expressly mentioned in the current Act, DOE has taken the position that such accidents are covered. The Committee amendment to H.R. 3653 amends current law by expressly adding to the activities covered by the Act all contractual activities involving the storage, disposal, or transportation of, or research and development on, spent nuclear fuel, high-level radioactive waste, or transuranic waste, activities authorized under the Waste Isolation Pilot Project under section 213 of Public Law 96-194, or the construction or operation of any storage or disposal site or facility.

While the current Act applies only to activities conducted by private entities under license from the NRC or contract for DOE, the

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Committee amendment would apply to waste activities performed by the Secretary of Energy or DOE employees as well as private entities under contract with DOE.

The Committee amendment exempts activities involving nuclear waste from all limitations of liability provided by the Act. In addition, the bill requires DOE to indemnify contractors engaged in waste activities to the full extent of their potential liability. Accordingly, the bill subjects the Government to unlimited liability for activities involving nuclear waste.

The source of funds used to make payments under an indemnification agreement with a waste contractor would depend upon the nature of the nuclear waste giving rise to the liability. For waste produced as a result of the generation of electricity in a nuclear power plant, an amount up to the maximum amount of financial protection required of large commercial power plants will be made available from the Nuclear Waste Fund, which is collected from generators of such wastes under section 302 of the Nuclear Waste Policy Act of 1982. Indemnification in excess of that amount would be paid from funds appropriated by the Congress in accordance with subsection 170i. of the Act as amended by section 7 of the bill. For wastes produced from all other activities, such as wastes from the nuclear weapons program, indemnification would be paid from the appropriated funds. For commingled defense and civilian wastes, the Committee amendment requires the Secretary of Energy to allocate the indemnity payments proportionally from appropriated funds and the Nuclear Waste Fund.

E. LIABILITY FOR ACCIDENTS OCCURRING OUTSIDE THE UNITED STATES

The current Act limits liability for accidents occurring outside the United States to $100 million and establishes an identical limit on the amount of indemnification available. Congress added this limitation in 1962 "[i]n view of the uncertainties of foreign judicial systems and the possible incentive to foreign courts to render excessive judgments because of the available $500 million governmental indemnity." The Committee amendment to H.R. 3653 does not change this limitation.

F. PUBLIC COMPENSATION IN EXCESS OF THE LIMITATION ON LIABILITY

Congressional commitment

The limitations on liability established in the Act are not intended to bar compensation of the public for damages in excess of those limitations. As stated by the Joint Committee on Atomic Energy in its report on the 1965 amendments to the bill, "the limitation of liability serves primarily as a device for facilitating further congressional review of such a situation, rather than an ultimate bar to further relief of the public." A 1975 amendment added this concept to the Act itself by providing that "in the event of a nuclear incident involving damages in excess of [the] amount of aggregate liability, the Congress will thoroughly review the particular incident and will take whatever action is deemed necessary and appropriate to protect the public from the consequences of a disaster of such magnitude."

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The Committee amendment to H.R. 3653 would clarify and strengthen the existing Congressional commitment. The amendment provides that in the event damages exceed the limitation on liability, or in the event of an accident involving radioactive wastes in which damages exceed the amount of funds available from the Nuclear Waste Fund under subsection d. (1)(B)(ii) of the Act as amended, the Congress will thoroughly review the particular incident and take whatever action is determined to be necessary to provide full and prompt compensation to the public for all public liability claims resulting from the accident.

In the event of such an accident, the NRC (in the case of an accident arising from an activity licensed by the NRC) or DOE (in the case of an accident arising from an activity performed under contract for DOE) would be required to survey the causes and extent of the damage and submit a public report thereon. In addition, the President would be required to submit to Congress:

(1) an estimate of the amount of additional funds needed to compensate personal injuries and property damage;

(2) recommendations for additional sources of funds to pay such compensation; and,

(3) plans for disbursing such compensation, including recommendations for allocating funds for the payment of future latent-injury claims.

The Committee contemplates that if a future Congress appropriates funds from general revenues to pay compensation in excess of the limitation on liability, the Congress could enact a revenue measure applicable to one or more sectors of the economy to recover such funds. The Committee amendment expressly states that the Act's limitation on liability may not be construed to preclude Congress from enacting a revenue measure applicable to NRC licensees to recover such funds. This provision is not intended to create any new taxing authority, but merely to make it clear that no sector of the nuclear industry is exempt from assessments made necessary as a result of Federal compensation payments.

The Committee recognizes that electric utilities may enter into sale and leaseback financing transactions with respect to large commercial power reactors licensed by the NRC. During the term of any such lease, the lessor is a passive owner of title to such a facility (like a mortgagee or holder of a security interest) and is not licensed by the NRC. The Committee does not contemplate that such a revenue measure would apply to any party to a sale and leaseback transaction that is not licensed by the NRC to operate the facility. Nothing in this provision or in the amendment to H.R. 3653 is intended to affect sale and leaseback financing.

The proposed Compensation Commission

As originally introduced, H.R. 3653 provided for the creation of a federal compensation commission in the event of an accident exceeding the limitation on liability. The compensation commission (rather than the President, as under the reported bill) would have been required to report to Congress on the amount of funds needed to pay compensation in excess of the liability limit, to recommend how the additional funds should be raised, how those funds should be disbursed, and how much money should be set aside for the pay-

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ment of future latent-injury claims. In addition, the compensation commission would have had exclusive jurisdiction over damage claims seeking compensation in excess of the applicable limitation on liability. The proposal raised numerous legal and practical questions that could not be resolved without thorough and extensive analysis. Accordingly, the Subcommitee on Energy and the Environment eliminated the provisions establishing the compensation commission, with the understanding that the proposal would be examined by the study commission established in section 9 of the bill.

The Study Commission

In place of the compensation commission, the Subcommittee adopted a provision requiring the President to establish a study commission to examine alternative means of fully compensating victims of a catastrophic nuclear accident exceeding the limitation on liability and to make recommendations thereon to the Congress. The study commission is to be established in accordance with the Federal Advisory Committee Act, and shall consist of between 7 and 11 members appointed by the President and representative of a broad range of views and interests.

The study commission is to recommend to the Congress: (1) changes in civil procedures needed for prompt disposition of claims; (2) standards for establishing priorities among claims; and (3) provisions for addressing latent injury claims. The Committee intends that the study commission consider, among other alternatives for providing public compensation, the feasibility of establishing a compensation commission as proposed by H.R. 3653 as originally introduced.

The study commission's report is due two years after enactment of the bill and the commission will terminate two months after transmittal of the report to the Congress. Implementation of the study commission's recommendations would require further legislation.

G. LITIGATION COSTS

A 1975 amendment to the Act excluded from the limit of liability the costs of investigating, settling, and defending claims from those sections of the Act relating to the government indemnity. Because corresponding changes were not made to the sections relating to private financial protection, the Department of Justice concluded that the Act permitted payment of these costs from private financial protection funds.

The Committee amendment to H.R. 3653 would prohibit the use of private financial protection funds (either primary financial protection or deferred premiums) to pay costs of investigating, settling, and defending claims. The Committee concluded that the purpose of the financial protection requirements is to ensure the availability of funds to compensate the public and that the prohibition on the use of these funds to pay litigation costs is necessary to prevent substantial reduction of the amount of funds available to pay public compensation.

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H. PRECAUTIONARY EVACUATIONS

The current Act provides compensation only for liability arising out of a "nuclear incident," which is defined in the Act as an occurrence causing personal injury or property damage as a result of the radioactive properties of nuclear materials. Both the Nuclear Regulatory Commission and the General Accounting Office have taken the position that this definition may not be broad enough to cover liability for the costs of a precautionary evacuation ordered when a radiation release appeared imminent but did not occur.

The Committee amendment to H.R. 3653 makes it clear that the Act does cover the costs of precautionary evacuations by redefining the "public liability" compensable under the Act to include liability arising out of precautionary evacuations as well as nuclear incidents. A "precautionary evacuation" is defined as the evacuation of the public within a specified area near a nuclear facility or transportation route (even if illegally diverted) that is prompted by an event that is not deemed a nuclear incident but that posed the threat of a nuclear incident and is ordered by an authorized State or local government official. This provision is not intended to create liability for precautionary evacuation expenses where no liability exists under state tort law, but only to provide compensation where such liability is established in accordance with state tort law.

I. NUCLEAR SHIP "SAVANNAH"

A new subsection 1. was added to the Price-Anderson Act in 1958 to authorize the Atomic Energy Commission to indemnify contractors engaged in activities involving the nuclear ship *Savannah*. The *Savannah* was decommissioned in 1971 and this authority expired on August 1, 1977. The Committee amendment eliminates the obsolete provision.

J. STATUTE OF LIMITATIONS

The current Act authorizes the NRC and DOE to require their respective licensees and contractors to waive certain legal defenses to claims arising out of an "extraordinary nuclear occurrence," that is, a large-scale accident involving substantial off-site radiological contamination and damage to persons and property. Among the defenses waived are those based on a state statute of limitations, but only if suit is instituted both within 3 years from the date the claimant knew or reasonably could have known of the injury or damage, and within 20 years after the date of the nuclear incident. Congress originally adopted the waiver to remove the bar to claims posed by restrictive statutes of limitations then in effect in many states. Since the waiver was first adopted in 1966, most states have abandoned the traditional "years-from-occurrence" limitation in favor of the a "years-from-discovery" test. As a result the standard set forth in the Act is more restrictive than the majority of states statutes. Moreover, because some radiation injuries may not become evident for more than 20 years after the nuclear incident, the current waiver may be ineffective to prevent restrictive state statutes from barring legitimate claims. Accordingly, the

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Committee approved an amendment to eliminate the existing years-from-occurrence test, thereby basing the waiver solely on a 3-years-from-discovery rule.

K. APPLICATION OF WAIVERS OF DEFENSES

Under current law, the waivers of defenses apply only to claims that arise out of an extraordinary nuclear occurrence involving either: (1) the construction, possession or operation of a production or utilization facility; (2) the transportation of nuclear material to or from a production or utilization facility; or (3) the possession, operation, or use by a DOE contractor or subcontractor of a nuclear device. Thus, the waivers would not apply to claims arising out of an extraordinary nuclear occurrence at a nuclear waste repository, in the course of transportation between a monitored retrievable storage facility and a nuclear waste repository, or involving indemnified nuclear materials licensees under section 53, 63, or 81 of the Atomic Energy Act. The Committee amendment to H.R. 3653 expands the applicability of the waivers of defenses to include activities involving indemnified materials licensees or nuclear waste.

L. CONSOLIDATION OF CLAIMS

The current law provides that in the event of an extraordinary nuclear occurrence the U.S. district court in the district where the occurrence takes place (or, in the case of an extraordinary nuclear occurrence outside the United States, the U.S. District Court for the District of Columbia) will have original jurisdiction over any public liability action arising from the occurrence, without regard to the citizenship of any party or the amount in controversy. Moreover, the current Act authorizes the removal to such district court of any public liability action arising from the occurrence that is pending in any state court or other U.S. district court, upon the motion of the defendant or either the Secretary of Energy or NRC, as appropriate.

These measures stem from the Congress's desire for equitable and uniform treatment of victims of a nuclear accident and the need to coordinate all phases of litigation that could result from a large nuclear accident. Moreover, consolidation of claims in a single court would be essential for the orderly distribution of the limited funds and to reservation of sufficient funds for victims whose injuries may not become manifest until long after the accident.

The Three Mile Island accident demonstrated the difficulty of basing court jurisdiction on the distinction between nuclear incidents deemed to be extraordinary nuclear occurrences and those that are not. Immediately following the accident, before the NRC determined that it did not constitute an extraordinary nuclear occurrence, all claims arising out of the accident were consolidated in the U.S. District Court for the Middle District of Pennsylvania. Subsequent to the NRC's decision, the U.S. Court of Appeals for the Third Circuit held that the district court did not have jurisdiction and ordered dismissal of all pending suits arising out of the accident.

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The need for consolidation of claims to ensure equitable and uniform treatment of victims and the orderly distribution of funds is just as great whether the claims arise from a nuclear incident that ultimately is deemed not to be an extraordinary nuclear occurrence or from an incident that is. For this reason, the Committee amendment to H.R. 3653 makes the Act's consolidation and removal provisions equally applicable to all nuclear incidents.

The Committee recognizes, of course, that Article III of the Constitution limits the types of cases that federal courts created under that Article may hear. For this reason, the Committee amendment expressly states that any suit asserting public liability shall be deemed to be an action arising under the Price-Anderson Act, thereby making suits asserting public liability "Cases . . . arising under . . . the Laws of the United States" within the meaning of Article III. Rather than designing a new body of substantive law to govern such cases, however, the amendment provides that the substantive rules for decision in such actions shall be derived from the law of the State in which the nuclear incident involved occurs, unless such law is inconsistent with the Price-Anderson Act. The Committee believes that conferring on the Federal courts jurisdiction over claims arising out of all nuclear incidents in this manner is within the Congress's constitutional authority and notes that the Congress has used this approach in the Outer Continental Shelf Lands Act.

M. SPECIAL CASELOAD MANAGEMENT PANEL

The Committee recognizes that the volume of litigation that could result from a catastrophic nuclear accident could exceed the resources of a single Federal district court. Accordingly, the Committee amendment to H.R. 3653 authorizes the chief judge of the court in which cases arising from a nuclear incident consolidated to appoint a special caseload management panel to coordinate and assign such cases. The chief judge could exercise this authority either if the court determines that the aggregate amount of public liability is likely to exceed the primary financial protection or if the chief judge determines that the caseload arising out of the accident will have an unusual impact on the court. Only U.S. district judges or circuit judges are eligible to serve on the panel. The panel may be used to consolidate claims, assign cases, appoint special masters, promulgate special rules of court consistent with the Federal Rules of Civil Procedure, implement measures encouraging efficient resolution of cases, and submit damage estimates to the President.

N. PUNITIVE DAMAGES

The current Act does not expressly state whether a court may award punitive damages in connection with a claim arising out of a nuclear incident. Nor does the Act expressly state whether private financial protection funds or government indemnity funds could be used to pay punitive damages if imposed. In 1984, in *Silkwood* v. *Kerr-McGee Corporation*, the U.S. Supreme Court resolved the first of these two issues when it held that the Atomic Energy Act, as amended by the Price-Anderson Act, does not prevent a court from

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imposing punitive damages under state tort law. The Court did not address the second issue, however, whether private financial protection or government indemnity funds available under the Price-Anderson Act could be used to pay a punitive damage award.

The Subcommittee on Energy and the Environment approved an amendment that would have prohibited use of either private financial protection or government indemnity funds available under the Act to pay punitive damage awards. The purpose of this amendment was to prevent the limited funds available for compensating actual injuries from being used to pay punitive awards. A serious question arose, however, whether the amendment subjected NRC licensees and DOE contractors to *unlimited* liability for punitive damages, thereby undermining one of the primary tenets of the Act. Accordingly, the Committee subsequently agreed to eliminate the amendment, thus restoring current law on the issue. Notwithstanding this action, the Committee remains opposed to punitive damage awards in connection with claims arising under the Price-Anderson Act because such awards could have the effect of diminishing the limited funds available to compensate actual injuries.

VI. Section-by-Section Analysis of H.R. 3653

Section 1 entitles the act the "Price-Anderson Amendments Act of 1986."

Section 2 amends section 170 b. of the Atomic Energy Act of 1954, which establishes financial protection requirements for NRC licenses, in four major respects.

First, section 2(a) requires large commercial power reactors licensed by the NRC (those that have a rated capacity of 100,000 electrical kilowatts or more) to maintain at least $200 million of primary financial protection, even if the maximum amount of financial protection available from private sources at reasonable cost or on reasonable terms is less than $200 million. If the amount of financial protection available from private sources exceeds $200 million, then large commercial power reactors would be required to maintain such higher amount. For clarity, section 2(a) also draws a distinction between "primary" financial protection required of large commercial power reactors and the "industry retrospective rating plan" in which section 170 b. of the Atomic Energy Act requires such reactors to participate.

Second, section 2(b) directs the NRC to increase the maximum deferred premium that may be charged each large commercial power reactor following any nuclear incident from its current level of $5 million to $63 million. Section 2(b) limits the amount of the deferred premium that may be charged with respect to any nuclear incident in any one year to $10 million per reactor.

Third, section 2(b) strikes "and costs" from the proviso in the current section 170 b. which states that "the amount which may be charged a licensee following any nuclear incident shall not exceed the licensee's pro rate share of the aggregate public liability claims and costs arising out of the nuclear incident." The purpose of this change is to preclude use of deferred premium funds from being used to pay for the costs of investigating, settling, and defending claims arising out of a nuclear incident.

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Fourth, section 2(c) establishes procedures to be followed by the NRC in borrowing funds from the Treasury if necessary to compensate victims of a nuclear incident promptly, before deferred premiums are collected for licensees. This authority is needed to ensure that the full amount of financial protection provided by section 170 b. is available to pay claims promptly after an accident, even though all deferred premiums may not be collected for up to 7 years after the accident. Any funds borrowed from the Treasury under this authority would be repaid with interest from deferred premiums subsequently collected from the utilities in accordance with the annual maximum on deferred premiums.

Section 2(c) also eliminates the NRC's existing authority to establish a maximum amount of deferred premiums that may be charged for all nuclear incidents in any one year and the NRC's never-used authority to charge some utilities smaller deferred premiums than others. The Committee notes that while section 2(c) eliminates the NRC's authority to establish an annual maximum with respect to the aggregate deferred premiums due on all nuclear incidents, section 2(b) establishes an annual maximum with respect to any one nuclear incident.

The Committee made the foregoing changes to section 170 b. to maximize the amount of funds that could be made readily available to the public following an accident at a nuclear power plant. At the same time, the Committee intended to mitigate the impact of the increase in the deferred premium requirement by establishing a maximum amount that may be collected in any one year with respect to any nuclear incident.

Section 3 extends the NRC's authority under section 170 c. of the Act to enter into indemnification agreements with its licensees for an additional ten years—until August 1, 1997.

Section 4 makes major changes in section 170 d. of the current Act, which authorizes DOE to indemnify its contractors engaged in nuclear activities that involve the risk of public liability for a substantial nuclear incident.

In order to ensure that the public is adequately protected under this subsection, the Department's indemnification authority, which has heretofore been discretionary, is made mandatory for all DOE contracts involving risk of public liability for a substantial nuclear incident.

In addition, the Department's indemnification authority under this subsection is extended for an additional ten years—until August 1, 1997.

A new subparagraph (B) is added to section 170 d.(1) to clarify the application of the Price-Anderson Act to activities of the Department involving radioactive waste. The new subparagraph directs the Secretary of Energy to enter into agreements of indemnification to cover all activities undertaken under contract for the Department involving the storage, disposal, or transportation of, or research and development on, spent nuclear fuel, high-level radioactive waste, or transuranic waste. These activities would include, among other things, activities at the Waste Isolation Pilot Project authorized under section 213 of Public Law 96-194, the construction or operation of storage or disposal facilities under the Nuclear

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Waste Policy Act of 1982, or the transportation of radioactive waste to such a facility.

With respect to claims arising out of activities involving radioactive waste produced as a result of the generation of electricity in a civilian nuclear power reactor, payment for valid claims would be made from the Nuclear Waste Fund established by Section 302 of the Nuclear Waste Policy Act of 1982, up to an amount not to exceed the maximum amount of financial protection required for large commercial power reactors under section 170 b.(1). Assuming there are 101 large commercial reactors required to maintain the maximum amount of financial protection at the time of a radioactive waste accident, the maximum amount payable from the Nuclear Waste Fund would be $6,563 million. In the event that the amount of claims payable from the Nuclear Waste Fund exceeds the amount then available in the Fund, the Secretary may borrow additional funds or increase the utility fee assessment in accordance with the authority granted by the Nuclear Waste Policy Act of 1982.

With respect to claims arising out of activities involving radioactive waste other than that produced as a result of the generation of electricity in a civilian power reactor (such as defense wastes), the source of funds to pay claims would be the same as that used for all other DOE contractor activities; that is, DOE appropriated funds. With respect to claims arising out of commingled civilian and defense wastes, the Secretary is directed to allocate compensation payments proportionally from the Nuclear Waste Fund and appropriated funds.

Paragraphs (2) and (3) of the new section 170 d. provide for an increase in the amount of the federal indemnity for public liability claims arising out of or in connection with DOE contractual activities from the current level of $500 million to the full extent of the potential aggregate liability of the contractor. Thus, for contractual activities involving radioactive wastes, the Federal indemnity would be unlimited; for all other contractual activities, the Federal indemnity would be in an amount equal to the sum of the two layers of financial protection required by section 170 b. (1) for large commercial power reactors licensed by the NRC. For the latter class of contract activities, the DOE indemnity will increase automatically as new nuclear power plants are licensed and the total amount of financial protection for such plants increases under section 170 b. (1). However, in an effort to stabilize the coverage of DOE contractors regardless of any future reductions in NRC reactor licensee coverage that might result from a decline in the number of commercial nuclear power plants in operation, paragraph (3) provides that the Federal indemnity will not be reduced in the event that the financial protection required of NRC-licensed large commercial power reactor is reduced.

Paragraphs (4), (5), and (6) consist of unchanged provisions in the current Act. Paragraph numbering of these provisions was added to conform to the remainder of the subsection.

Paragraph (7) expands Price-Anderson coverage of DOE contractor activities to include costs of precautionary evacuations ordered by State or local officials provided that such evacuations are determined to be reasonable by the Secretary, either prior to or within

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60 days after issuance of the evacuation order. If the Secretary fails to find the evacuation to have been reasonable within 60 days, his decision may be overridden by a panel consisting of one representative each from the NRC, the Federal Emergency Management Agency, and the state in which the evacuation took place.

Section 4(b)(1) amends the definition of "person" in subsection 11 s. of the current Atomic Energy Act to provide that in the event that the Secretary of Energy undertakes activities involving the storage, disposal, or transportation, of or research and development on, radioactive waste directly rather than by contract, the Secretary (or any Department of Energy employee) shall be treated as if the Secretary (or employee) were a contractor with whom an indemnity agreement had been entered into pursuant to section 170 d. Thus, under section 11 s., as amended, the coverage of the Price-Anderson Act will be available regardless of whether such activities were undertaken by DOE directly or pursuant to contract.

Section 4(b)(2) makes a conforming change to the definition of "person indemnified" in section 11 t. of the current Atomic Energy Act.

Section 4(c) amends section 11 of the Atomic Energy Act by adding definitions of the terms "high-level radioactive waste," "spent nuclear fuel," and "transuranic waste." The first two terms are given the meanings assigned to these terms in the Nuclear Waste Policy Act; the latter term, which is not defined in the Nuclear Waste Policy Act, is given the meaning assigned to it in the NRC's regulations.

Section 5, subsection (a) amends the definition of "public liability" in section 11 w. of the Atomic Energy Act to include legal liability arising out of or resulting from a precautionary evacuation as well as a nuclear incident. This amendment is needed to conform the definition of public liability to the provisions of section 4 of the bill which require DOE to indemnify its contractors for reimbursement of the costs of precautionary evacuations. The definition of public liability as amended by section 5(a) makes it clear that all costs of responding to a nuclear incident or precautionary evacuation incurred by a State, or a political subdivision of a State, as well as such incurred by the public, are compensable.

Section 5(b) defines the term "precautionary evacuation." A precautionary evacuation is an evacuation of the public ordered by an authorized State or local government official and prompted by the perceived risk of injuries from a nuclear incident even though the event ultimately is not classified as a nuclear incident.

Section 6 makes four significant changes in section 170 e. of the current Atomic Energy Act, which establishes the aggregate liability of persons indemnified for a single nuclear incident.

First, section 6 excludes the cost of investigating and settling claims and defending suits for damages from the limitation on liability. Although payment of these costs using Federal indemnity funds is already precluded by section 170 d. of the existing Act, section 6 would also preclude payment of these costs from the limited funds available under private financial protection arrangements. This amendment conforms with a similar change made by section 2(b) of the bill.

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Second, section 6 increases the aggregate liability for a single nuclear incident for DOE contractors other than those performing activities involving radioactive waste to the sum of the two layers of financial protection required of large commercial power reactors licensed by the NRC under section 170 b.

Third, section 6 would exclude DOE contractors indemnified under section 170 d.(1)(B), that is, contractors performing activities involving radioactive waste, from any limitation on liability.

The aggregate liability of all indemnified NRC licensees other than large commercial power reactors remains unchanged.

Fourth, section 6 clarifies and strengthens the Congressional commitment to compensate the public in full for claims resulting from a catastrophic accident exceeding the statutory limitation on liability. In the event of such an accident, the Congress will thoroughly review the accident in accordance with section 170 i. of the Atomic Energy Act, as amended by section 7 of the bill, and take whatever action is determined to be necessary to provide full and prompt compensation to the public.

Section 6 also provides that the Congress will take similar action with respect to any nuclear incident involving radioactive waste in which claims exceed the maximum amount of funds available under section 170 d.(1)(b)(ii), which provides for payment of approximately $6.5 billion out of the Nuclear Waste Fund.

In addition, section 6 stipulates that the statutory limitation on liability may not be construed to preclude a future Congress from imposing additional revenue measures upon NRC licensees (or indeed any other class of persons) if necessary to provide funds to compensate victims of a nuclear accident.

Section 7 amends section 170 i. of the Atomic Energy Act by establishing the requirements and procedures for congressional review of any nuclear incident that appears likely to exceed the statutory limitation on liability. As under current law, the NRC or DOE (as appropriate) would be required to report to the Congress on the causes and extent of damage following a catastrophic nuclear accident. In addition, section 7 would require the President: (a) to report to Congress on the amount of additional funds that will be needed to compensate damages in excess of the liability limit; (b) to recommend additional sources of funds for such compensation; and (c) to propose specific plans for disbursing compensation to the public. Implementation of the President's proposals would require additional congressional action.

The Committee believes that the provisions of this section will significantly strengthen the original section 170 i. and facilitate congressional action fulfilling the commitment to provide full and prompt compensation of all valid claims. In addition, these provisions will enable Congress to tailor compensation to the particular circumstances of the incident.

Section 8 would extend by 10 years—until August 1, 1997—the NRC's authority under section 170 k. of the current Act to indemnify certain nonprofit educational institutions licensed to operate nuclear research reactors.

Section 9 amends section 170 1. by striking the now obsolete authority of the Atomic Energy Commission to indemnify contractor activities involving the nuclear ship *Savannah*, which has since

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been decommissioned. In place of this obsolete authority, subsection 9 adds new provisions requiring the President to establish a commission to study appropriate means of fully compensating the public in the event of a catastrophic nuclear accident exceeding the statutory limitations on liability. The study commission is required to recommend to the Congress: (a) changes in civil procedures needed for prompt disposition of claims; (b) standards for establishing priorities among claims; and (c) provisions for addressing latent injury claims. The study commission's report will be due two years after enactment of the bill and the commission will terminate two months after transmittal of the report. Implementation of the study commission's recommendations would require further legislation.

Section 10, subsection (a) amends section 170 n.(1) of the current Act by eliminating the condition that a state statute of limitations be waived only if suit is filed within 20 years after the nuclear incident. As a result, the waiver of a state statute of limitation is conditioned only on suit being instituted within 3 years of the date the claimant knew or reasonably could have known of the injury.

Section 10(b) broadens the application of the waiver-of-defenses provisons of the existing Act of include extraordinary nuclear occurrences involving radioactive wastes or nuclear materials licensees indemnified by the NRC.

Section 11, subsection (a) amends section 170 n.(2) of the Atomic Energy Act to make the consolidation of claims provisions of that paragraph applicable to all nuclear incidents, rather than just nuclear incidents deemed to constitute and "extraordinary nuclear occurrence." This change is necessary to ensure the equitable and uniform treatment of all victims and the coordination of all phases of litigation that could result from a large nuclear accident, even though the accident may not constitute an "extraordinary nuclear occurrence." Section 11(a) also permits consolidation and removal of public liability actions pending on the date of enactment of the bill.

Section 11(b) defines the term "public liability action" as any suit asserting public liability, and states that any such action arises under the Price-Anderson Act for purposes of Federal court jurisdiction. The subsection further provides that the substantive rules for decision in such an action are to be derived from the law of the state in which the nuclear incident occurs, unless inconsistent with the Price-Anderson Act. The Committee believes that the conferring on the Federal court jurisdiction over the claims arising out of all nuclear incidents in this manner is within the Congress's constitutional authority.

Section 11(c) amends section 170 n. of the current Act to authorize the chief judge of the Federal district court in which claims are consolidated to establish a special case load management panel to assist the court in coordination and assigning cases arising out of the nuclear incident and implenenting measures for the equitable, prompt, and efficient resolution of such cases. This authority would be exercisable only if the aggregate amount of public liability is likely to exceed the amount of primary financial protection under section 170 b. of the Act or the amount of the federal indemnity under section 170 d., as appropriate, or the caseload arising out of

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the nuclear incident will have an unusual impact on the work of the court. Only Federal district and circuit court judges are eligible to serve on such panel.

Section 12 amends section 170 p. of the current Act to require NRC and DOE to report to the Congress by August 1, 1993 on the need for continuation or modification of the Price-Anderson Act.

Section 13 changes references to the "Commission" in the present Act to either the NRC, the Secretary of Energy, or both, as appropriate. It also changes references to the Joint Committee on Atomic Energy to the Congress, changes Revised Statutes citations to the United States Code citations, and makes other technical and conforming changes.

Section 14 provides that, with two exceptions, the amendments to the Price-Anderson Act made by the bill will become effective on August 1, 1987 and will apply to nuclear incidents occurring on or after such date. The exceptions are section 9, requiring the President to establish a study commission, and section 11, authorizing the consolidation in and removal to federal district court of claims arising out of any nuclear incident. Section 9 will become effective on the date of enactment to permit the President to establish the study commission within 90 days of enactment. Section 11 will become effective on the date enactment of the bill to permit consolidation and remvoal of the cases pending on such date.

VII. Congressional Budget Office Cost Estimate

U.S. Congress,
Congressional Budget Office,
Washington, DC, June 6, 1986.

Hon. Morris K. Udall,
Chairman, Committee on Interior and Insular Affairs, House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed H.R. 3653, the Price-Anderson Act Amendments of 1986, as ordered reported by the House Committee on Interior and Insular Affairs, May 21, 1986. This bill would increase the government's potential financial liability in the event of certain types of nuclear accidents. Because there is no basis for predicting the number and magnitude of such incidents, CBO cannot estimate the cost of the increased liability. CBO estimates that the bill's provision for a new Presidential Commission on Catastrophic Nuclear Accidents will cost approximately $500,000 per year, for fiscal years 1987 and 1988. No significant costs to the federal government would result from other provisions of H.R. 3653.

Bill purpose

H.R. 3653 extends and revises the Price-Anderson Act, which governs the liability and indemnification of federal licensees and contractors in the event of a nuclear accident. Under this law, the Nuclear Regulatory Commission (NRC) regulates and indemnifies licensees, and the Department of Energy (DOE) indemnifies its contractors.

This bill raises the maximum liability for a nuclear accident involving commercial power plants and federal contractors from $0.7

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billion and $0.5 billion, respectively, to an estimated $6.5 billion per incident. The bill sets the liability limit according to the amount of financial protection that the NRC requires commercial licensees to maintain from primary liability insurance (rising from the current level of $160 million per plant to $200 million per plant) and from deferred premiums levied on all other operating plants (up to $63 million per reactor, as determined by the NRC). The maximum deferred premium of $63 million is limited to $10 million per year for each nuclear incident. H.R. 3653 also includes instructions that the NRC shall either request an appropriation to meet any deferred premium requirements for which the commission is liable, or borrow the required funds from the Treasury. Any funds appropriated or borrowed to meet NRC liability requirements shall be repaid to the Treasury from amounts made available by future deferred premiums, with interest. Special procedures are included in the bill for Congressional action on claims exceeding the above limits.

The increase in the liability for accidents involving commercial plants would not affect the federal government's financial liability, because it would be covered by an increase in the amount of private financial protection that the licensees must maintain. On the other hand, because the government fully indemnifies federal contractors, the increase in liability for incidents involving the contractors would be borne by the federal government. The liability and indemnification of other licensees would remain at current levels.

H.R. 3653 explicity makes federal indemnification applicable to certain activities or incidents. For example, it confirms that DOE must indemnify contractors involved with its nuclear waste programs. Claims related to the Nuclear Waste Fund are to be paid directly from the fund. The bill also provides for the reimbursement of the cost of precautionary evacuations resulting from incidents involving contractors indemnified by the federal government under certain conditions.

Budget impact

The provisions affecting the government's financial liability would not increase federal spending in fiscal years 1986 through 1991 unless a nuclear incident involving federal indemnification occurs in those years. If such an accident were to occur, enactment of the bill would increase the government's potential financial liability by an estimated $6.0 billion per incident for incidents currently covered by the Price-Anderson Act, and by an estimated $6.5 billion per incident for incidents not indemnified by the government under existing law but covered under H.R. 3653. This estimate assumes that commercial licensee, would be required to maintain $200 million in primary liability insurance, and that the 100 reactors with operating licenses would be subject to the maximum deferred premiums. The government's liability ultimately would depend on the NRC's policies regarding commercial licensees' financial protection, and could increase in the future as a result of any increase in the number of operating reactors. Raising the liability and indemnification limit is not expected to affect the government's costs for claims currently pending before the courts and

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DOE, because the amount of alleged damages per incident does not exceed the liability limit in existing law.

H.R. 3653 requires that the President establish a Commission on Catastrophic Nuclear Accidents within 90 days after enactment of the bill. The commission shall consist of 7 to 11 members who must conduct a study of appropriate means of fully compensating victims of a catastrophic nuclear accident that exceeds the aggregate liability specified by H.R. 3653. A final report containing the commission's recommendations must be submitted to the Congress within two years of enactment of the bill. The estimated cost of establishing this Presidential commission of $500,000 per year, for fiscal year 1987 and 1988. The commission shall terminate two months after the required final report is submitted.

Other provisions in the bill are expected to have no significant impact on federal outlays.

No costs would be incurred by state or local governments as a result of enactment of this bill.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER, *Director.*

COMMITTEE DETERMINATION ON ADVISORY COMMITTEE

Section 9 of the bill reported by the Committee amends section 170 1. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(1)) to establish a Presidential Commission on Catastrophic Nuclear Accidents. In accordance with the requirements of section 5(b) of the Federal Advisory Committee Act (5 U.S.C. App.), the Committee has determined that the functions of the proposed commission are not and cannot be performed by one or more agencies or by an existing advisory committee, and cannot be performed by enlarging the mandate of an existing advisory committee.

OVERSIGHT STATEMENT

The Committee has conducted hearings on the operation of the Price-Anderson Act for some time and will continue to maintain oversight activities over the implementation of this legislation. No recommendations were received by the Committee pursuant to Rule XI.

COMMITTEE RECOMMENDATION

The Committee on Interior and Insular Affairs, by voice vote, ordered H.R. 3653, as amended, favorably reported to the House on May 21, 1986.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

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ATOMIC ENERGY ACT OF 1954

* * * * * * *

SEC. 11. DEFINITION.—The intent of Congress in the definitions as given in this section should be construed from the words or phrases used in the definitions. As used in this Act:

a. * * *

* * * * * * *

j. The term "extraordinary nuclear occurrence" means any event causing a discharge or dispersal of source, special nuclear, or byproduct material from its intended place of confinement in amounts offsite, or causing radiation levels offsite, which the [Commission] *Nuclear Regulatory Commission or the Secretary of Energy, as appropriate* determines to be substantial, and which the [Commission] *Nuclear Regulatory Commission or the Secretary of Energy, as appropriate,* determines has resulted or will probably result in substantial damages to persons offsite or property offsite. Any determination by the [Commission] *Nuclear Regulatory Commission or the Secretary of Energy, as appropriate,* that such an event has, or has not, occurred shall be final and conclusive, and no other official or any court shall have power or jurisdiction to review any such determination. The [Commission] *Nuclear Regulatory Commission or the Secretary of Energy, as appropriate,* shall establish criteria in writing setting forth the basis upon which such determination shall be made. As used in this subsection, "offsite" means away from "the location" or the "contract location" as defined in the applicable [Commission] *Nuclear Regulatory Commission or the Secretary of Energy, as appropriate,* indemnity agreement, entered into pursuant to section 170.

* * * * * * *

m. The term "indemnitor" means (1) any insurer with respect to his obligations under a policy of insurance furnished as proof of financial protection; (2) any licensee, contractor or other person who is obligated under any other form of financial protection, with respect to such obligations; and (3) the [Commission] *Nuclear Regulatory Commission or the Secretary of Energy, as appropriate,* with respect to any obligation undertaken by it in an indemnity agreement entered into pursuant to section 170.

* * * * * * *

q. The term "nuclear incident" means any occurrence, including an extraordinary nuclear occurrence, within the United States causing, within or outside the United States, bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material: *Provided, however,* That as the term is used in [subsection] *section* 170 l., it shall include any such occurrence outside the United States: *And provided further,* That as the term is used in [subsection] *section* 170 d., it shall include any such occurrence outside the United States if such occurrence involves source, special nuclear, or byproduct material owned by, and used by or under contract with, the United States: *And provided*

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further, That as the term is used in [subsection] *section* 170 c., it shall include any such occurrence outside both the United States and any other nation if such occurrence arises out of or results from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material licensed pursuant to chapters 6, 7, 8, and 10 of this Act, which is used in connection with the operation of a licensed stationary production or utilization facility or which moves outside the territorial limits of the United States in transit from one person licensed by the [Commission] *Nuclear Regulatory Commission* to another person licensed by the [Commission] *Nuclear Regulatory Commission*.

* * * * * * *

s. The term "person" means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency other than the Commission, any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing. *For purposes of activities that the Secretary of Energy is authorized or directed to undertake, under this Act or any other law, that involve the risk of public liability for a substantial nuclear incident as a result of the storage, disposal, or transportation of, or research and development on, spent nuclear fuel, high-level radioactive waste, or transuranic waste, activities authorized to be carried out under the Waste Isolation Pilot Project under section 213 of Public Law 96-164, or the construction or operation of any storage or disposal site or facility, the Secretary shall, to the extent that such activities are not undertaken by contract, be considered as if the Secretary were a contractor with whom an indemnity agreement has been entered into under section 170 d.*

t. The term "person indemnified" means (1) with respect to a nuclear incident occurring within the United States or outside the United States as the term is used in [subsection] *section* 170 c., and with respect to any nuclear incident in connection with the design, development, construction, operation, repair, maintenance, or use of the nuclear ship *Savannah*, the person with whom an indemnity agreement is executed or who is required to maintain financial protection, and any other person, *as defined in subsection s.*, who may be liable for public liability or (2) with respect to any other nuclear incident occurring outside the United States, the person with whom an indemnity agreement is executed and any other person who may be liable for public liability by reason of his activities under any contract with the [Commission] *Secretary of Energy* or any project to which indemnification under the provisions of [subsection] *section* 170 d., has been extended or under any subcontract, purchase order, or other agreement, of any tier, under any such contract or project.

* * * * * * *

w. The term "public liability" means any legal liability arising out of or resulting from a nuclear incident *or precautionary evacuation (including all costs incurred by a State, or a political subdivi-*

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sion of a State, in the course of responding to a nuclear incident or a precautionary evacuation), except: (i) claims under State or Federal workmen's compensation acts of employees of persons indemnified who are employed at the site of and in connection with the activity where the nuclear incident occurs; (ii) claims arising out of an act of war; and (iii) whenever used in subsections [170] a., c., and k. *of section 170,* claims for loss of, or damage to, or loss of use of property which is located at the site of and used in connection with the licensed activity where the nuclear incident occurs. "Public liability" also includes damage to property of persons indemnified: *Provided,* That such property is covered under the terms of the financial protection required, except property which is located at the site of and used in connection with the activity where the nuclear incident occurs.

* * * * * * *

dd. The terms "high-level radioactive waste" and "spent nuclear fuel" have the meanings given such terms in section 2 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101).

ee. The term "transuranic waste" means material contaminated with elements that have an atomic number greater than 92, including neptunium, plutonium, americium, and curium, and that are in concentrations greater than 10 nanocuries per gram, or in such other concentrations as the Nuclear Regulatory Commission may prescribe to protect the public health and safety.

ff. The term "precautionary evacuation" means an evacuation of the public within a specified area near a nuclear facility, or the transportation route in the case of an accident involving transportation of source material, special nuclear material, byproduct material, high-level radioactive waste, spent nuclear fuel, or transuranic waste (including such material that is illegally diverted from its intended place of confinement) to or from a production or utilization facility, if the evacuation is—

(1) the result of any event that is not classified as a nuclear incident but that poses the threat of a nuclear incident and causes an evacuation; and

(2) ordered by an official of a State or a political subdivision of a State, who is authorized by State law to order such an evacuation.

gg. The term "public liability action", as used in section 170, means any suit asserting public liability. A public liability action shall be deemed to be an action arising under section 170, and the substantive rules for decision in such action shall be derived from the law of the State in which the nuclear incident involved occurs, unless such law is inconsistent with the provisions of such section.

* * * * * * *

SEC. 170. INDEMNIFICATION AND LIMITATION OF LIABILITY.—

a. Each license issued under section 103 or 104 and each construction permit issued under section 185 shall, and each license issued under section 53, 63, or 81 may, for the public purposes cited in [subsection 2 i. of the Atomic Energy Act of 1954, as amended] *section 2 i.,* have as a condition of the license a requirement that the licensee have and maintain financial protection of such type

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and in such amounts as the [Commission] *Nuclear Regulatory Commission (in this section referred to as the "Commission")* in the exercise of its licensing and regulatory authority and responsibility shall require in accordance with subsection [170] b. to cover public liability claims. Whenever such financial protection is required it may be a further condition of the license that the licensee execute and maintain an indemnification agreement in accordance with subsection [170] c. The Commission may require, as a further condition of issuing a license, that an applicant waive any immunity from public liability conferred by Federal or State law.

b. (*1*) The amount of *primary* financial protection required shall be the amount of liability insurance available from private sources, except that the Commission may establish a lesser amount on the basis of criteria set forth in writing, which it may revise from time to time, taking into consideration such factors as the following: [(1)] (*A*) the cost and terms of private insurance, [(2)] (*B*) the type, size, and location of the licensed activity and other factors pertaining to the hazard, and [(3)] (*C*) the nature and purpose of the licensed activity: *Provided,* That for facilities designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more, the amount of *primary* financial protection required shall be the maximum amount available at reasonable cost and on reasonable terms from private sources (*excluding the amount of private liability insurance available under the industry retrospective rating plan required in this subsection), or $200,000,000, whichever amount is more.* Such primary financial protection may include private insurance, private contractural indemnities, self-insurance, other proof of financial responsibility, or a combination of such measures and shall be subject to such terms and conditions as the Commission may, by rule, regulation, or order, prescribe. [In prescribing such terms and conditions for licensees required to have and maintain financial protection equal to the maximum amount of liability insurance available from private sources, the Commission shall, by rule initially prescribed not later than twelve months from the date of enactment of this act, include, in determining such maximum amount,] *The Commission shall require licensees that are required to have and maintain primary financial protection equal to the maximum amount of liability insurance available from private sources, or $200,000,000, whichever amount is more, to maintain, in addition to such primary financial protection,* private liability insurance available under an industry retrospective rating plan providing for premium charges deferred in whole or major part until public liability from a nuclear incident exceeds or appears likely to exceed the level of the primary financial protection required of the licensee involved in the nuclear incident: *Provided,* That such insurance is available to, and required of, all of the licensees of such facilities without regard to the manner in which they obtain other types or amounts of such *primary* financial protection: *And provided further,* [That the standard deferred premium which may be charged following any nuclear incident under such a plan shall be not less than $2,000,000 nor more than $5,000,000 for each facility required to maintain the maximum amount of financial protection] *That the standard deferred premium that may be charged following*

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any nuclear incident under such a plan shall not be more than $63,000,000 (but not more than $10,000,000 in any 1 year) for each facility required to maintain the maximum amount of primary financial protection: And provided further, That the amount which may be charged a licensee following any nuclear incident shall not exceed the licensee's pro rata share of the aggregate public liability claims [and costs] arising out of the nuclear indicent. Payment of any State premium taxes which may be applicable to any deferred premium provided for in this Act shall be the responsibility of the licensee and shall not be included in the retrospective preimum established by the Commission. [The Commission is authorized to establish a maximum amount which the aggregate deferred premiums charged for each facility within one calendar year may not exceed. The Commission may establish amounts less than the standard premium for individual facilities taking into account such factors as the facility's size, location, and other factors pertaining to the hazard.]

(2) The Commission shall establish such requirements as are necessary to assure availability of funds to meet any assessment of deferred premiums within a reasonable time when due, and may provide reinsurance or shall otherwise guarantee the payment of such premiums in the event it appears that the amount of such premiums will not be available on a timely basis through the resources of private industry and insurance. Any agreement by the Commission with a licensee or indemnitor to guarantee the payment of deferred premiums may contain such terms as the Commission deems appropriate to carry out the purposes of this section and to assure reimbursement to the Commission for its payments made due to the failure of such licensee or indemnitor to meet any of its obligations arising under or in connection with financial protection required under this subsection including without limitation terms creating liens upon the licensed facility and the revenues derived therefrom or any other property or revenues of such licensee to secure such reimbursement and consent to the automatic revocations of any license.

(3) (A) In the event that the Commission is liable for any deferred premiums pursuant to paragraph (2), the Commission shall—

(i) request the Congress to appropriate sufficient funds to satisfy such payments; or

(ii) to the extent approved in appropriation Acts, issue to the Secretary of the Treasury obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be agreed to by the Commission and the Secretary of the Treasury.

(B) Any funds appropriated pursuant to subparagraph (A)(i) shall be repaid to the general fund of the United States Treasury from amounts made available by future deferred premium assessments, with interest at a rate determined by the Secretary of the Treasury on the basis of the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the date that the funds appropriated are made available.

(C) Redemption of obligations issued under subparagraph (A)(ii) shall be made by the Commission from amounts made available by

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future deferred premium assessments. Such obligations shall bear interest at a rate determined by the Commission by taking into consideration the average market yield on outstanding marketable obligations to the United States of comparable maturities during the months preceding the issuance of the obligations under this paragraph. The Secretary of the Treasury shall purchase any issued obligations, and for such purpose the Secretary of the Treasury may use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, United States Code, and the purposes for which securities may be issued under such chapter are extended to include any purchase of such obligations. The Secretary of the Treasury may at any time sell any of the obligations acquired by the Secretary of the Treasury under this paragraph. All redemptions, purchases, and sales by the Secretary of the Treasury of obligations under this paragraph shall be treated as public debt transactions of the United States.

c. The Commission shall, with respect to licenses issued between August 30, 1954, and August 1, [1987] *1997*, for which it requires financial protection of less than $560,000,000, agree to indemnify and hold harmless the licensee and other persons indemnified, as their interest may appear, from public liability arising from nuclear incidents which is in excess of the level of financial protection required of the licensee. The aggregate indemnity for all persons indemnified in connection with each nuclear incident shall not exceed $500,000,000, excluding costs of investigation and settling claims and defending suits for damage: *Provided, however*, That this amount of indemnity shall be reduced by the amount that the financial protection required shall exceed $60,000,000. Such a contract of indemnification shall cover public liability arising out of or in connection with the licensed activity. With respect to any production or utilization facility for which a construction permit is issued between August 30, 1954, and August 1, [1987] *1997*, the requirements of this subsection shall apply to any license issued for such facility subsequent to August 1, [1987] *1997*.

[d. In addition to any other authority the Commission may have, the Commission is authorized until August 1, 1987, to enter into agreements of indemnification with its contractors for the construction or operation of production or utilization facilities or other activities under contracts for the benefit of the United States involving activities under the risk of public liability for a substantial nuclear incident. In such agreements of indemnification the Commission may require its contractor to provide and maintain financial protection of such a type and in such amounts as the Commission shall determine to be appropriate to cover public liability arising out of or in connection with the contractual activity, and shall indemnify the persons indemnified against such claims above the amount of the financial protection required, in the amount of $500,000,000, excluding costs of investigating and settling claims and defending suits for damage in the aggregate for all persons indemnified in connection with such contract and for each nuclear incident: *Provided*, That this amount of indemnity shall be reduced by the amount that the financial protection required shall exceed $60,000,000: *Provided further*, That in the case of nuclear incidents occurring outside the United States, the amount of the indemnity

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provided by the Commission shall not exceed $100,000,000. The provisions of this subsection may be applicable to lump sum as well as cost type contracts and to contracts and projects financed in whole or in part by the Commission. A contractor with whom an agreement of indemnification has been executed and who is engaged in activities connected with the underground detonation of a nuclear explosive device shall be liable, to the extent so indemnified under this section, for injuries or damage sustained as a result of such detonation in the same manner and to the same extent as would a private person acting as principal, and no immunity or defense founded in the Federal, State, or municipal character of the contractor or of the work to be performed under the contract shall be effective to bar such liability.]

d. (1)(A) In addition to any other authority the Secretary of Energy (in this section referred to as the "Secretary") may have, the Secretary shall, until August 1, 1997, enter into agreements of indemnification with contractors of the Department of Energy for the construction or operation of production or utilization facilities or other activities under contracts for the benefit of the United States involving activities under the risk of public liability for a substantial nuclear incident or precautionary evacuation.

(B)(i) The requirement in subparagraph (A) to enter into agreements of indemnification with contractors shall include contracts entered into by the Secretary for the purpose of carrying out such activities as the Secretary is authorized to undertake, under this Act or any other law, involving the storage, disposal, or transportation of, or research and development on, spent nuclear fuel, high-level radioactive waste, or transuranic waste, activities authorized to be carried out under the Waste Isolation Pilot Project under section 213 of Public Law 96-164, or the construction or operation of any storage or disposal site or facility. For all such activities, indemnification under subparagraph (A) shall be the exclusive means of indemnification under this section.

(ii) For the purpose of compensating public liability claims, as defined in section 11 w., arising out of activities involving the storage or disposal of spent nuclear fuel, high-level radioactive waste, or transuranic waste produced as a result of the generation of electricity in a civilian nuclear power reactor, including the transportation of such materials to a storage or disposal site or facility and the construction or operation of any such site or facility, the Secretary shall make available funds, in an amount not to exceed the maximum amount of financial protection required of licensees under subsection a., from the Nuclear Waste Fund established in section 302 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222).

(iii) Public liability claims arising out of activities involving the storage, disposal, or transportation of, or research and development on, spent nuclear fuel, high-level radioactive waste, or transuranic waste, not specified in clause (ii), activities authorized to be carried out under the Waste Isolation Pilot Project under section 213 of Public Law 96-164, or the construction or operation of any storage or disposal site or facility, shall be compensated in accordance with the provisions of this Act and from the same source of funds applicable to all other contractors indemnified under this subsection.

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(iv)(I) In the event of a nuclear incident that arises out of, results from, or occurs in the course of, activities undertaken by the Secretary in connection with the storage, disposal, or transportation of, or research and development on, spent nuclear fuel, high-level radioactive waste, or transuranic waste, activities authorized to be carried out under the Waste Isolation Pilot Project under section 213 of Public Law 96-164, or the construction or operation of any storage or disposal site or facility, the Secretary shall determine the extent to which such incident involves materials produced as a result of the generation of electricity in a civilian nuclear power reactor, or materials resulting from other activities, or both, and based upon such determination, render a decision as to the appropriate source of funds, in accordance with clauses (ii) and (iii), to be used in compensating public liability claims.

(II) The funds to be used to compensate public liability claims under this subparagraph shall be provided in a manner and in such amounts as are appropriate to ensure that the funds necessary to compensate such claims are shared on a pro rata basis, in accordance with the determination rendered under subclause (I). The decision on the sources of such funds shall be final and conclusive. Not later than 90 days after the date of the enactment of the Price-Anderson Amendments Act of 1986, the Secretary shall promulgate standards and regulations for making the determinations required under this subparagraph.

(2) In agreements of indemnification entered into under paragraph (1), the Secretary may require the contractor to provide and maintain financial protection of such a type and in such amounts as the Secretary shall determine to be appropriate to cover public liability arising out of or in connection with the contractual activity, and shall indemnify the persons indemnified against such claims above the amount of the financial protection required, to the full extent of the potential aggregate liability of the contractor, exluding costs of investigating and settling claims and defending suits for damage in the aggregate for all persons indemnified in connection with such contract and for each nuclear incident. This amount of indemnity shall be reduced by the amount of the financial protection that the Secretary requires of the contractor.

(3) Notwithstanding paragraph (2), if the maximum amount of financial protection required of licensees under subsection a. is increased by the Commission, the amount of indemnity, together with any financial protection required of the contractor, shall at all times remain equal to or greater than the maximum amount of financial protection required of licensees under subsection a. The amount of indemnity provided contractors under this subsection shall not, at any time, be reduced in the event that the maximum amount of financial protection required of licensees is reduced.

(4) In the case of nuclear incidents occurring outside the United States, the amount of the indemnity provided by the Secretary under this subsection shall not exceed $100,000,000.

(5) The provisions of this subsection may be applicable to lump sum as well as cost type contracts and to contracts and projects financed in whole or in part by the Secretary.

(6) A contractor with whom an agreement of indemnification has been executed and who is engaged in activities connected with the

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underground detonation of a nuclear explosive device shall be liable, to the extent so indemnified under this section, for injuries or damage sustained as a result of such detonation in the same manner and to the same extent as would a private person acting as principal, and no immunity or defense founded in the Federal, State, or municipal character of the contractor or of the work to be performed under the contract shall be effective to bar such liability.

(7) Indemnification agreements entered into under paragraph (1) shall include reimbursement for costs of precautionary evacuations ordered by State or local officials if such evacuations are determined to be reasonable—

(A) by the Secretary of Energy prior to the evacuation;

(B) by the Secretary of Energy subsequent to the evacuation, but not later than 60 days after the issuance of the evacuation order; or

(C) if the Secretary of Energy does not make a determination of reasonableness under subparagraph (B) within 60 days, by a panel of 3 members (1 appointed by the Nuclear Regulatory Commission, 1 appointed by the Director of the Federal Emergency Management Agency, and 1 appointed by the Governor of the State (or for any State without a Governor, the chief executive officer) in which the precautionary evacuation took place) not later than 60 days after the convening of such panel.

[e. The aggregate liability for a single nuclear incident of persons indemnified, including the reasonable costs of investigating and settling claims and defending suits for damage, shall not exceed (1) the sum of $500,000,000 together with the amount of financial protection required of the licensee or contractor or (2) if the amount of financial protection required of the licensee exceeds $60,000,000, such aggregate liability shall not exceed the sum of $560,000,000 or the amount of financial protection required of the licensee, whichever amount is greater: *Provided,* That in the event of a nuclear incident involving damages in excess of that amount of aggregate liability, the Congress will thoroughly review the particular incident and will take whatever action is deemed necessary and appropriate to protect the public from the consequences of a disaster of such magnitude: *And provided further,* That with respect to any nuclear incident occurring outside of the United States to which an agreement of indemnification entered into under the provisions of subsection 170 d. is applicable, such aggregate liability shall not exceed the amount of $100,000,000 together with the amount of financial protection required of the contractor.]

e. (1) The aggregate liability for a single nuclear incident of persons indemnified (other than persons indemnified under subsection d. (1)(B)), excluding the costs of investigating and settling claims and defending suits for damage, shall not exceed—

(A) in the case of facilities designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more, and in the case of contractors with whom the Secretary has entered into an agreement of indemnification under subsection d.—

(i) the maximum amount of financial protection required of such facilities under subsection b.; or

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(ii) in the case of such contractors, any higher amount of indemnity and financial protection that is required under paragraphs (2) and (3) of subsection d.; and

(B) in the case of all other licensees of the Commission required to maintain financial protection under this section—

(i) $500,000,000, together with the amount of financial protection required of the licensee; or

(ii) if the amount of financial protection required of the licensee exceeds $60,000,000, $560,000,000 or the amount of financial protection required of the licensee, whichever amount is more.

(2) In the event of a nuclear incident involving damages in excess of the amount of aggregate liability under paragraph (1), and in the event of a nuclear incident involving persons indemnified under subsection d. (1)(B) in which claims exceed the maximum amount of funds available under subsection d. (1)(B)(ii), the Congress will thoroughly review the particular incident in accordance with subsection i. and take whatever action is determined to be necessary (including approval of appropriate compensation plans and appropriation of funds) to provide full and prompt compensation to the public for all public liability claims resulting from a disaster of such magnitude.

(3) No provision of paragraph (1) may be construed to preclude the Congress from enacting a revenue measure, applicable to licensees of the Commission required to maintain financial protection pursuant to subsection b., to fund any action undertaken pursuant to paragraph (2).

(4) With respect to any nuclear incident occuring outside of the United States to which an agreement of indemnification entered into under the provisions of subsection d. is applicable, such aggregate liability shall not exceed the amount of $100,000,000, together with the amount of financial protection required of the contractor.

f. The Commission *or the Secretary, as appropriate,* is authorized to collect a fee from all persons with whom an indemnification agreement is executed under this section. This fee shall be $30 per year per thousand kilowatts of thermal energy capacity for facilities licensed under section 103: *Provided,* That the Commission or the *Secretary, as appropriate,* is authorized to reduce the fee for such facilities in reasonable relation to increases in financial protection required above a level of $60,000,000. For facilities licensed under section 104, and for construction permits under section 185, the Commission is authorized to reduce the fee set forth above. The Commission shall establish criteria in writing for determination of the fee for facilities licensed under section 104, taking into consideration such factors as (1) the type, size, and location of facility involved, and other factors pertaining to the hazard, and (2) the nature and purpose of the facility. For other licenses, the Commission shall collect such nominal fees as it deems appropriate. No fee under this subsection shall be less than $100 per year.

g. In administering the provisions of this section, the Commission *or the Secretary, as appropriate,* shall use, to the maximum extent practicable, the facilities and services of private insurance organizations, and the Commission *or the Secretary, as appropriate,* may contract to pay a reasonable compensation for such services. Any contract made under the provisions of this subsection may be made

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without regard to the provisions of section 3709 of the Revised Statutes *(41 U.S.C. 5)*, as amended, upon a showing by the Commission *or the Secretary, as appropriate,* that advertising is not reasonably practicable and advance payments may be made.

h. The agreement of indemnification may contain such terms as the Commission *or the Secretary, as appropriate,* deems appropriate to carry out the purposes of this section. Such agreement shall provide that, when the Commission *or the Secretary, as appropriate,* makes a determination that the United States will probably be required to make indemnity payments under this section, the Commission *or the Secretary, as appropriate,* shall collaborate with any person indemnified and may approve the payment of any claim under the agreement of indemnification, appear through the Attorney General on behalf of the person indemnified, take charge of such action, and settle or defend any such action. The Commission *or the Secretary, as appropriate,* shall have final authority on behalf of the United States to settle or approve the settlement of any such claim on a fair and reasonable basis with due regard for the purposes of this Act. Such settlement shall not include expenses in connection with the claim incurred by the person indemnified.

[i. After any nuclear incident which will probably require payments by the United States under this section or which will probably result in public liability claims in excess of $560,000,000, the Commission shall make a survey of the causes and extent of damage which shall forthwith be reported to the Joint Committee, to the Congressmen of the affected districts, and to the Senators of the affected States, and, except for information which would cause serious damage to the national defense of the United States, all final findings shall be made available to the public, to the parties involved and to the courts. The Commission shall report to the Joint Committee by April 1, 1958, and every year thereafter on the operations under this section.]

i. (1) After any nuclear incident involving damages that are likely to exceed the amount of aggregate liability under subsection e. (1) or the amount of funds available under subsection d. (1)(B)(ii), the Secretary or the Commission, as appropriate shall—

(A) make a survey of the causes and extent of damage; and

(B) expeditiously submit a report setting forth the results of such survey to the Congress, to the Representatives of the affected districts, to the Senators of the affected States, and (except for information that will cause serious damage to the national defense of the United States) to the public, to the parties involved, and to the courts.

(2) Not later than 90 days after any determination by a court, pursuant to subsection o., that the public liability from a single nuclear incident may exceed the amount of aggregate liability under subsection e. (1) or the amount of funds available under subsection d. (1)(B)(ii), the President shall submit to the Congress—

(A) an estimate of the aggregate dollar value of personal injuries and property damage that arises from the nuclear incident and exceeds the amount of aggregate liability under subsection e. (1) or the amount of funds available under subsection d. (1)(B)(ii);

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(B) recommendations for additional sources of funds to pay claims exceeding the amount of aggregate liability under subsection e. (1) or the amount of funds available under subsection d. (1)(B)(ii), which recommendations shall consider a broad range of possible sources of funds (including possible revenue measures on the sector of the economy, or on any other class, to which such revenue measures might be applied); and

(C) 1 or more compensation plans, containing a recommendation or recommendations as to the relief to be provided, including any recommendations that funds be allocated or set aside for the payment of claims that may arise as a result of latent injuries that may not be discovered until a later date.

j. In administering the provisions of this section, the Commission *or the Secretary, as appropriate,* may make contracts in advance of appropriations and incur obligations without regard to [section 3679 of the Revised Statutes, as amended.] *sections 1341, 1342, 1349, 1350, and 1351, and subchapter II of chapter 15, of title 31, United States Code.*

k. With respect to any license issued pursuant to section 53, 63, 81, 104 a., or 104 c. for the conduct of educational activities to a person found by the Commission to be a nonprofit educational institution, the Commission shall exempt such licensee from the financial protection requirement of subsection [170] a. With respect to licenses issued between August 30, 1954, and August 1, [1987,] *1997,* for which the Commission grants such exemption:

(1) the Commission shall agree to indemnify and hold harmless the licensee and other persons indemnified, as their interests may appear, from public liability in excess of $250,000 arising from nuclear incidents. The aggregate indemnity for all persons indemnified in connection with each nuclear incident shall not exceed $500,000,000, excluding cost of investigating and settling claims and defending suits for damage;

(2) such contracts of indemnification shall cover public liability arising out of or in connection with the licensed activity; and shall include damage to property of persons indemnified, except property which is located at the site of and used in connection with the activity where the nuclear incident occurs; and

(3) such contracts of indemnification, when entered into with a licensee having immunity from public liability because it is a State agency, shall provide also that the Commission shall make payments under the contract on account of activities of the licensee in the same manner and to the same extent as the Commission would be required to do if the licensee were not such a State agency.

Any licensee may waive an exemption to which it is entitled under this subsection. With respect to any production or utilization facility for which a construction permit is issued between August 30, 1954, and August 1, [1987,] *1997,* the requirements of this subsection shall apply to any license issued for such facility subsequent to August 1, [1987.] *1997.*

[1. The Commission is authorized until August 1, 1977, to enter into an agreement of indemnification with any person engaged in the design, development, construction, operation, repair, and main-

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tenance or use of the nuclear-powered ship authorized by section 716 of the Merchant Marine Act, 1936, and designated the "nuclear ship Savannah." In any such agreement of indemnification the Commission may require such person to provide and maintain financial protection of such a type and in such amounts as the Commission shall determine to be appropriate to cover public liability arising from a nuclear incident in connection with such design, development, construction, operation, repair, maintenance or use and shall indemnify the person indemnified against such claims above the amount of the financial protection required in the amount of $500,000,000 excluding costs of investigating and settling claims and defending suits for damage in the aggregate for all persons indemnified in connection with each nuclear incident: *Provided*, That this amount of indemnity shall be reduced by the amount that the financial protection required shall exceed $60,000,000.]

1. (1) Not later than 90 days after the date of the enactment of the Price-Anderson Amendments Act of 1986, the President shall establish a commission (in this subsection referred to as the "study commission") in accordance with the Federal Advisory Committee Act (5 U.S.C. App.) to study means of fully compensating victims of a catastrophic nuclear accident that exceeds the amount of aggregate liability under subsection e. (1) or the amount of funds available under subsection d. (1)(B)(iii).

(2)(A) The study commission shall consist of not less than 7 and not more than 11 members, who—

(i) shall be appointed by the President; and

(ii) shall be representative of a broad range of views and interests.

(B) The members of the study commission shall be appointed in a manner that ensures that not more than a mere majority of the members are of the same political party.

(C) Each member of the study commission shall hold office until the termination of the study commission, but may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

(D) Any vacancy in the study commission shall be filled in the manner in which the original appointment was made.

(E) The President shall designate 1 of the members of the study commission as chairperson, to serve at the pleasure of the President.

(3) The study commission shall conduct a comprehensive study of appropriate means of fully compensating victims of a catastrophic nuclear accident that exceeds the amount of aggregate liability under subsection e. (1), and shall submit to the Congress a final report setting forth—

(A) recommendations for any changes in the laws and rules governing the liability or civil procedures that are necessary for the equitable, prompt, and efficient resolution and payment of all valid damage claims, including the advisability of adjudicating public liability claims through an administrative agency instead of the judicial system;

(B) recommendations for any standards or procedures that are necessary to establish priorities for the hearing, resolution, and payment of claims when awards are likely to exceed the amount of funds available within a specific time period; and

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(C) recommendations for any special standards or procedures necessary to decide and pay claims for latent injuries caused by the nuclear incident.

(4)(A) The chairperson of the study commission may appoint and fix the compensation of a staff of such persons as may be necessary to discharge the responsibilities of the study commission, subject to the applicable provisions of the Federal Advisory Committee Act (5 U.S.C. App.) and title 5, United States Code.

(B) To the extent permitted by law and requested by the chairperson of the study commission, the Administrator of General Services shall provide the study commission with necessary administrative services, facilities, and support on a reimbursable basis.

(C) The Attorney General, the Secretary of Health and Human Services, and the Director of the Federal Emergency Management Agency shall, to the extent permitted by law and subject to the availability of funds, provide the study commission with such facilities, support, funds and services, including staff, as may be necessary for the effective performance of the functions of the study commission.

(D) The study commission may request any Executive agency to furnish such information, advice, or assistance as it determines to be necessary to carry out its functions. Each such agency is directed, to the extent permitted by law, to furnish such information, advice or assistance upon request by the chairperson of the study commission.

(E) Each member of the study commission may receive compensation at the maximum rate now or hereafter prescribed by law for each day such member is engaged in the work of the study commission. Each member may also receive travel expenses, including per diem in lieu of subsistence under sections 5702 and 5703 of title 5, United States Code.

(F) The functions of the President under the Federal Advisory Committee Act (5 U.S.C. App.) that are applicable to the study commission, except the function of reporting annually to the Congress, shall be performed by the Administrator of General Services.

(5) The final report required in paragraph (3) shall be submitted to the Congress not later than the expiration of the 2-year period beginning on the date of the enactment of the Price-Anderson Amendments Act of 1986.

(6) The study commission shall terminate upon the expiration of the 2-month period beginning on the date on which the final report required in paragraph (3) is submitted.

m. The Commission *or the Secretary, as appropriate,* is authorized to enter into agreements with other indemnitors to establish coordinated procedures for the prompt handling, investigation, and settlement of claims for public liability. The Commission *or the Secretary, as appropriate,* and other indemnitors may make payments to, or for the aid of, claimants for the purpose of providing immediate assistance following a nuclear incident. Any funds appropriated to the Commission *or the Secretary, as appropriate,* shall be available for such payments. Such payments may be made without securing releases, shall not constitute an admission of the liability of any person indemnified or of any indemnitor, and shall operate as

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a satisfaction to the extent thereof of any final settlement or judgment.

n. (1) With respect to any extraordinary nuclear occurrence to which an insurance policy or contract furnished as proof of financial protection or an indemnity agreement applies and which—

[(a)] (*A*) arises out of or results from or occurs in the course of the construction, possession, or operation of a production or utilization facility, [or]

[(b)] (*B*) arises out of or results from or occurs in the course of transportation of source material, byproduct material, or special nuclear material to or from a production or utilization facility, [or]

[(c)] (*C*) during the course of the contract activity arises out of or results from the possession, operation, or use by a [Commission] *Department of Energy* contractor or subcontractor of a device utilizing special nuclear material or byproduct material,

(D) arises out of, results from, or occurs in the course of, the construction, possession, or operation of any facility licensed under section 53, 63, or 81, for which the Commission has imposed as a condition of the license a requirement that the licensee have and maintain financial protection under subsection a.,

(E) arises out of, results from, or occurs in the course of, transportation of source material, byproduct material, or special nuclear material to or from any facility licensed under section 53, 63, or 81, for which the Commission has imposed as a condition of the license a requirement that the licensee have and maintain financial protection under subsection a., or

(F) arises out of, results from, or occurs in the course of, activities undertaken by the Secretary, including activities undertaken by contract, in connection with the storage or disposal of, or research and development on, high-level radioactive waste, spent nuclear fuel, or transuranic waste, including the transportation of such materials to a storage or disposal site or facility and the construction or operation of any such site or facility,

the Commission *or the Secretary, as appropriate,* may incorporate provisions in indemnity agreements with licensees and contractors under this section, and may require provisions to be incorporated in insurance policies or contracts furnished as proof of financial protection, which waive (i) any issue or defense as to conduct of the claimant or fault of persons indemnified, (ii) any issue or defense as to charitable or governmental immunity, and (iii) any issue or defense based on any statute of limitations if suit is instituted within three years from the date on which the claimant first knew, or reasonably could have known, of his injury or damage and the cause thereof [, but in no event more than twenty years after the date of the nuclear incident]. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. When so incorporated, such waivers shall be judicially enforceable in accordance with their terms by the claimant against the person indemnified. Such waivers shall not preclude a defense based upon a failure to take reasonable steps to mitigate

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damages, nor shall such waivers apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant. The waivers authorized in this subsection shall, as to indemnitors, be effective only with respect to those obligations set forth in the insurance policies or the contracts furnished as proof of financial protection and in the indemnity agreements. Such waivers shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (i) the terms of insurance policies or contracts furnished as proof of financial protection, or indemnity agreements, and (ii) the limit of liability provisions of subsection [170] e.

(2) With respect to any public liability action arising out of or resulting from [an extraordinary nuclear occurrence] *a nuclear incident*, the United States district court in the district where [the extraordinary nuclear occurrence] *the nuclear incident* takes place, or in the case of [an extraordinary nuclear occurrence] *a nuclear incident* taking place outside the United States, the United States District Court for the District of Columbia, shall have original jurisdiction without regard to the citizenship of any party or the amount in controversy. Upon motion of the defendant or of the Commission *or the Secretary, as appropriate*, any such action pending in any State court *(including any such action pending on the date of the enactment of the Price-Anderson Amendments Act of 1986)* or United States district court shall be removed or transferred to the United States district court having venue under this subsection. Process of such district court shall be effective throughout the United States. *In any action that is or becomes removable prusuant to this paragraph, a petition for removal shall be filed within the period provided in section 1446 of title 28, United States Code, or within the 30-day period beginning on the date of the enactment of the Price-Anderson Amendments Act of 1986, whichever occurs later.*

(3)(A) Following any nuclear incident, the chief judge of the United States district court having jurisdiction under paragraph (2) with respect to public liability actions (or the judicial council of the judicial circuit in which the nuclear incident occurs) may appoint a special caseload management panel (in this paragraph referred to as the "managment panel") to coordinate and assign (but not necessarily hear themselves) cases arising out of the nuclear incident, if—

(i) the United States district court having jurisdiction under paragraph (2) determines that the aggregate amount of public liability is likely to exceed the amount of primary financial protection available under subsection b. (or an equivalent amount in the case of a contractor indemnified under subsection d.); or

(ii) the chief judge of the United States district court (or the judicial council of the judicial circuit) determines that cases arising out of the nuclear incident will have an unusual impact on the work of the court.

(B)(i) Each managment panel shall consist only of members who are United States district judges or circuit judges.

(ii) Members of a management panel may include any United States district judge or circuit judge or another district court or

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court of appeals, if the chief judge of such other district court or court of appeals consents to such assignment.

(C) It shall be the function of each management panel——

(i) to consolidate related or similar claims for hearing or trail;

(ii) to establish priorities for the handling of different classes of cases;

(iii) to assign cases to a particular judge or special master;

(iv) to appoint special masters to hear particular types of cases, or particular elements or procedural steps of cases;

(v) to promulgate special rules of court, not inconsistent with the Federal Rules of Civil Procedure, to expedite cases or allow more equitable consideration of claims;

(vi) to implement such other measures, consistent with existing law and the Federal Rules of Civil Procedure, as will encourage the equitable, prompt, and efficient resolution of cases arising out of the nuclear incident; and

(vii) to assemble and submit to the President such data, available to the court, as may be useful in estimating the aggregate damages from the nuclear incident.

o. Whenever the United States district court in the district where a nuclear incident occurs, or the United States District Court for the District of Columbia in case of a nuclear incident occurring outside the United States, determines upon the petition of any indemnitor or other interested person that public liability from a single nuclear incident may exceed the limit of liability under subsection [170] e.:

(1) Total payments made by or for all indemnitors as a result of such nuclear incident shall not exceed 15 per centum of such limit of liability without the prior approval of such court;

(2) The court shall not authorize payments in excess of 15 per centum of such limit of liability unless the court determines that such payments are or will be in accordance with a plan of distribution which has been approved by the court or such payments are not likely to prejudice the subsequent adoption and implementation by the court of a plan of distribution pursuant to [subparagraph (3) of this subsection (o)] paragraph (3); and

(3) The Commission *or the Secretary, as appropriate,* shall, and any other indemnitor or other interested person may, submit to such district court a plan for the disposition of pending claims and for the distribution of remaining funds available. Such a plan shall include an allocation of appropriate amounts for personal injury claims, property claims, and possible latent injury claims which may not be discovered until a later time. Such court shall have all power necessary to approve, disapprove, or modify plans proposed, or to adopt another plan; and to determine the proportionate share of funds available for each claimant. The Commission *or the Secretary, as appropriate,* any other indemnitor, and any person indemnified shall be entitled to such orders as may be appropriate to implement and enforce the provisions of this section, including orders limiting the liability of the persons indemnified, orders approving or modifying the plan, orders staying the payment

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of claims and the execution of court judgements, orders apportioning the payments to be made to claimants, and orders permitting partial payments to be made before final determination of the total claims. Th orders of such court shall be effective throughout the United States and shall include establishments of priorities between claimants and classes of claims, as necessary to insure the most equitable allocation of available funds.

(4) The Commission shall, within ninety days after a court shall have made such determination, deliver to the [Joint Committee] *Congress* a supplement to the report prepared in accordance with subseciton [170 i. of this Act] *i.* setting forth the estimated requirements for full compensation and relief of all claimants, and recommendations as to the relief to be provided.

p. (1) The Commission [shall submit to the Congress by August 1, 1983, a detailed report] *and the Secretary shall submit to the Congress by August 1, 1993, detailed reports* concerning the need for continuation or modification of the provisions of this section, taking into account the condition of the nuclear industry, availability of private insurance, and the state of knowledge concerning nuclear safety at that time, among other relevant factors, and shall include recommendations as to the repeal or modification of any of the provisions of this section.

(2) Not later than April 1 of each year, the Commission and the Secretary shall each submit an annual report to the Congress setting forth the activities under this section during the preceding calendar year.

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ADDITIONAL VIEWS

The final version of H.R. 3563 was a compromise measure, and like any true compromise, there are provisions in this bill which we would prefer to modify. We believe that the combined first and second tier liability limit of $6.5 billion contained in the bill as reported by the Committee is too low. Following the accident at Three Mile Island, the Federal Insurance Administration estimated that under a worst-case scenario, a core meltdown, property loss alone from the Three Mile Island accident would have cost $17 billion at that time. This figure assumes that no personal injuries would have been sustained, and that there would have been a complete and uneventful evacuation of the area around the plant, a likelihood that is remote. The lower the liability limit, the more of the costs of the accident will probably be borne by the taxpayers. Given the current federal budget situation and the enormous potential costs of a nuclear accident, we believe that the $6.5 billion first and second tier limit is inadequate, and should be increased.

In addition, the bill as reported does not contain a provision to adjust the liability limit for inflation. The Energy and Environment Subcommittee approved a provision to require that both the first and second tier liability limits would be adjusted for inflation at least once every five years. The proposed adjustment requirement was intended to ensure that the amount of funds available to compensate damage claims would keep pace with inflation. The NRC estimated, for example, that had the liability limit established in 1957 been adjusted for inflation, the amount of financial protection required as of 1982 would have been $1.8 billion instead of the $610 million then provided. Unfortunately, the inflation adjustment provision was dropped during the full Committee consideration of the bill, as part of the final compromise version of the legislation. When the bill comes to the floor of the House, we will strongly support efforts to restore the inflation adjustment provision.

JOHN SEIBERLING.
JIM MOODY.
DALE E. KILDEE.
MEL LEVINE.
RON DE LUGO.
ED MARKEY.
PETER H. KOSTMAYER.
JIM WEAVER.
GEORGE MILLER.
BRUCE F. VENTO.
SAM GEJDENSON.

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ADDITIONAL VIEWS

Unfortunately, I was unable to participate in the full Interior Committee markup of the Price-Anderson Amendments Act of 1986. However, as one of the two Members of the Joint Committee on Atomic Energy still serving in Congress, I feel it is appropriate to comment on the actions of the Interior Committee to date. The Price-Anderson Act has served the public well since 1957 and I applaud the Committee for acting expeditiously to report an extension of the Act.

I am concerned, however, that in certain areas the Committee has done more harm than good. As I asked during Subcommittee markup, the Price-Anderson Act is not broken, so why fix it? The purpose of the Act has always been two-fold—to assure immediate compensation for the public in the unlikely event of a nuclear accident, and to provide a climate that will encourage the development of safe nuclear energy. To continue to fulfill these goals, it is clearly necessary to increase the size of the ocmpensation pool which is set at $660 million under current law. The Subcommittee on Energy and the Environment reported H.R. 3653 with a new compensation pool level of $2.2 billion. As more plants are brought on line, this compensation pool would have increased to over $2.5 billion. This potential liability, that the utility ratepayers and taxpayers would have had to shoulder, was four times greater that what ia available under current law, and was 100 times more than the total amount that has been paid out in claims over the entire 30 year period since the Price-Anderson Act was originally enacted. I felt that the $2.2 billion limit was somewhat high, but was fair, reasonable and in keeping with the goals of the Act. Each nuclear power plant would have been liable for up to $20 million in the event of a nuclear accident. In full Committee, however, that figure was raised up to $6.5 billion, thereby increasing the amount a utility owning one nuclear plant would be resonsible for to $63 million, and sending a clear signal that a majority of the Committee does not really care whether or not another nuclear plant is ever built in the United States. The people who finance and operate these plants have stated emphatically that without reasonable limits on liability they will not be able to continue to invest in America's nudlear energy option. I believe that the long term effects of this unreasonable liability limit will shut down this domestic energy source. To continue to maintain the essential goals of the Price-Anderson Act, the limit must be substantially reduced. $2.2 billion is a reasonable figure and I will do what I can in the Science and Technology Committee and on the Floor of the House to restore that limit.

Additionally, I am concerned that the excessive liability limit will create an adverse economic climate for attracting capital for utilities who already own and operate nuclear plants. Representa-

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tives from Wall Street investment houses have testified that, in fact, there will be an additional "risk premium" added to nuclear utilities. Quantifying the risk premium, however, is difficult because it is based solely on the perceptions of the individual investor. Trying to attach a quantifiable number to the risk premium is much like providing a point spread for next year's Super Bowl—whatever the number it will clearly be in dispute and subject to change.

The Committee has, however, done much to strengthen the assurances the public has of receiving full relief in the event of a nuclear accident. The Committee has provided in H.R. 3653 a mechanism for Congress to act quickly on additional compensation measures, if needed, to fully compensate the public. While I find the language gratuitous, the Committee has deemed it appropriate to remind Congress it has the power to enact revenue measures to reimburse the treasury. I am also concerned that the Committee has gone to excess in establishing unlimited liability for accidents arising out of activities relating to the nuclear waste program. The two vital mechanisms that make the Price-Anderson Act work are economic channelling and the limitation on liability. By eliminating the limitation on liability for waste activities, the Committee is setting a dangerous precedent. Not only is it opening up the Federal Treasury to unlimited raids by greedy trial lawyers, but also it is altering the basic structure and balance of the Price-Anderson Act for the most stable and protected part of the fuel cycle. The facts clearly call for maintaining a compensation limit on liability for waste activities as well as other nuclear risks.

Two issues which were addressed at length, both in the Subcommittee and full Committee, were subrogation and punitive damages. The idea of adding subrogation rights to the Price-Anderson Act was thoroughly discussed, and rejected, both by the Subcommittee and the full Committee. Subrogation would create a backdoor to unlimited liability and destroy the omnibus and channelling features that make the Act work. Subrogation in no way enhances the ability of the public to receive prompt compensation. In fact, by spawning additional litigation, subrogation would ultimately slow relief to the public. The full Committee also reversed a provision added by the Subcommittee which would have prevented the payment of punitive damages out of Price-Anderson funds. Removing any reference to punitive damages was a wise decision and I commend my colleague from Ohio, John Seiberling, for agreeing to remove this controversial issue. It is totally inconsistent to entertain the imposition of punitive damages for behavior which is wholly subject to the most stringent Federal regulations ever developed.

The public is better served by the Price-Anderson Act than it is without it. Unfortunately, there will always be those who will be dissatisfied with the Price-Anderson system. They will be dissatisfied because they know full well that the Price-Anderson Act plays a key role in the continuation of America's nuclear energy option. Some self-proclaimed "consumer groups" and "safe energy advocates" would rather sell-out the public for the sake of shutting down a vital industry, than work to improve the Price-Anderson Act within its stated goals. While I have strong reservations about

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some specifics of H.R. 3653, I believe Chairman Udall and the Committee have done a good job in maintaining the basic structure of the Act.

MANUEL LUJAN, Jr.

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ADDITIONAL VIEWS

I want to commend Chairman Udall on his leadership and applaud the Committee for its willingness to reach an agreement on legislation to extend the Price-Anderson Act. It has been almost 30 years since Price-Anderson was first enacted and, during this time, our nuclear industry has developed into a viable and growing energy option. There have been some critical setbacks such as the Three Mile Island nuclear reactor accident and, more recently, the Chernobyl catastrophy in the Soviet Union which have understandably evoked concern about nuclear safety and adequate liability insurance coverage. This has invariably led to the desire to update Price-Anderson to increase nuclear industry accountability and properly compensate the public for nuclear accident damages.

I think the bill favorably reported by the Committee provides greater assurances that victims of a nuclear accident will be compensated in full and that the nuclear industry will assume a larger share of the burden of providing compensation. At the same time, the measure sets a clear limit on liability which I believe is absolutely necessary. The Subcommittee on Energy and the Environment reported H.R. 3653 with an overall limit of $2.2 billion on liability, which was increased by the full Committee to $8.2 billion by a close vote of 21 to 20. To avoid another confrontation on a substitute with a substantially lower total liability figure, the Committee agreed to a final threshold of $6.5 billion. While this compromise did not completely satisfy everyone's concerns, it demonstrated that a consensus could be reached because the Committee was unified in its ultimate goal of improving the Act.

I was pleased that the Committee agreed to remove the subrogation rights provision from the final bill. One of the attractive features of Price-Anderson that made it workable is the desire of the entire nuclear industry to share in the responsibility and shoulder the costs of an accident occurring at any nuclear facility. The right of subrogation would allow utilities to sue the nuclear plant which had the accident, or DOE to sue its contractors. This would destroy the benefits and purpose of Price-Anderson's omnibus, no-fault system.

I also support the Committee's action to clarify the intent of Mrs. Vucanovich's amendment providing unlimited liability for accidents involving nuclear wastes. It was necessary to ensure that DOE contractors are completely indemnified and are not liable for any costs ensuing from a waste accident. Otherwise, we would see little work performed or progress made in the disposal of nuclear wastes.

Many of us on the Committee have reservations about various portions of H.R. 3653. In the end, however, I think we accomplished our dual objective of providing full coverage for damages and inju-

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ries resulting from a nuclear accident, while ensuring the continuation of commercial nuclear power production in the United States.

JERRY HUCKABY.

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ADDITIONAL VIEWS

In 1957, when Price-Anderson was first enacted, it was for the express purpose of providing more compensation to the public in the event of a serious nuclear accident than would otherwise be available. Its additional purpose was to allow for the commercialization of nuclear energy. The dual purposes of Price-Anderson have been the lynchpin of the United States' leadership in the peaceful uses of atomic power since the inception of "Atoms for Peace" under President Eisenhower.

America's leadership in the development of commercial nuclear energy has helped us develop a vital domestic energy source. An energy source that provides clean, economical electricity that has helped raise the standard of living for ourselves and our allies. But perhaps more important, our technological leadership has allowed the United States to play the dominant role in world nonproliferation policy. If we foreclose America's nuclear energy option we run the risk of jeopardizing our national security both from a domestic and international perspective.

We believe the Committee has recognized the need to maintain a workable Price-Anderson Act. Currently, utilities are responsible for a retrospective assessment of $5 million per plant per incident beyond the maximum private insurance available. If the Act is not extended, utilities will continue to be covered for the life of their units by existing law. Any new plants will be subject to whatever tort remedies are available in a given jurisdiction. The current level of Price-Anderson does not provide adequate protection for the public. There is no argument that the industry should bear more responsibility for serious nuclear accidents. There was a clear consensus in the Committee that, in order for Price-Anderson to remain workable, an absolute limit on liability had to be maintained. The debate centered on the issue of what that limit should be.

From the time when the old Joint Committee on Atomic Energy picked the $500 million figure for indemnification, the limit on liability has been completely arbitrary. Any worst case scenario contemplating damages, as well as any scenario of how an accident would affect the nuclear industry, is subjective at best. The question then becomes: how do we continue to meet the dual goals of the Act in light of the circumstances we face in 1986?

The Subcommittee on Energy and the Environment reported H.R. 3653 with a threshold of $2.2 billion. As more plants are brought on line, this figure will increase to over $2.5 billion. This burden, which the ratepayers and taxpayers are apparently willing to accept, is four times greater than what is available under current law, and 100 times more than the total amount paid out in claims over the entire 30 year period since the Price-Anderson Act was originally enacted.

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During Full Committee consideration, the $2.2 billion limit was increased to $8.2 billion by the narrowest of margins. There was no clear consensus, at that time, of what the limits should be. We are pleased that, eventually, some accommodation could be reached. However, we share reservations that a $6.5 billion limit may lead to indefinite continuation of the de facto moratorium on the development of nuclear energy in the United States. It has been stated emphatically by the people who ultimately make these decisions, the utility CEO's, that they will not continue to invest in America's nuclear energy option without reasonable limits. They have made it clear that the $6.5 billion limit is considered to be excessive.

The Committee has done much to strengthen assurances to the public that it will receive full relief in the event of a nuclear accident. The Committee has provided a mechanism in the bill which allows Congress to act quickly on additional compensation measures in order to compensate the public fully. In addition, the Committee has reserved all of Congress' rights to reimburse itself for any expenditure from the industry if deemed appropriate to maintain a threshold which will provide an environment conducive to the continuation of the nuclear option.

In both the Subcommittee and Full Committee, two issues were addressed at length: subrogation and punitive damages. The idea of adding subrogation rights to Price-Anderson was thoroughly discussed and rejected, by both the Subcommittee and Full Committee. Subrogation would create a back door to unlimited liability and destroy the omnibus and channeling features that make the Act so effective. Subrogation in no way enhances the ability of the public to receive prompt compensation. In fact, by spawning additional litigation, subrogation could ultimately delay relief to the public. The Full Committee also reversed a provision added by the Subcommittee which would have prevented the payment of punitive damages out of Price-Anderson funds. Removing any reference to punitive damages was a wise decision. It is totally inconsistent to entertain the imposition of punitive damages for behavior which is wholly subject to the most stringent Federal regulations ever developed.

While each of us has reservations about different provisions of H.R. 3653, we commend Chairman Udall and the Committee for maintaining the basic structure of the Act and, at the same time, serving the consumers, ratepayers, and taxpayers well.

AUSTIN J. MURPHY.
BEVERLY BYRON.
GEORGE (BUDDY) DARDEN.

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ADDITIONAL VIEWS

Each time the Price-Anderson Act has been extended Congress has seen fit to make improvements that, for the most part, have enhanced the effectiveness and workability of the Act and improved the protection to the public in the event of a serious nuclear accident. In 1966, Congress provided for waivers of defenses to facilitate recovery by plaintiffs and extended the statute of limitations. In 1975, Congress phased out government indemnity as additional plants were licensed, increased the limitation on liability, and extended indemnity coverage outside the territorial limits of the United States for certain limited activities. This year, the Interior Committee has acted to increase the limitation on liability, extend the statute of limitations and, perhaps most significantly, extended specific coverage to accidents arising from Nuclear Waste Policy Act (NWPA) activities.

I strongly believe NWPA activities should be covered by Price-Anderson. The Committee, however, has seen fit to establish unlimited liability for waste accidents. I see this action as unnecessary, counterproductive and, in the long run, it will do more harm than good.

With the enactment of the NWPA, the Federal Government assumed responsibility for the packaging, transportation, and eventual disposal of our nation's spent nuclear fuel, high-level nuclear waste, and transuranic waste. While the basic structure of Price-Anderson is a sound mechanism for delivering compensation in the event of a catastrophic accident, the specifics of the act were not designed with the NWPA in mind. Representing a state which is one of the top three candidate sites for a repository, from the outset, I have supported amending the Act to assure the public will be fully compensated in a timely fashion for injuries arising from NWPA activities.

Unfortunately, the Committee has given way to the emotionalism of the waste issue, and in doing so has opened up the federal treasury to the whims of state tort law. By establishing unlimited liability for waste accidents the Committee has taken away one of the court's most important tools—the discretion to prioritize claims. Additionally, by creating unlimited liability for waste activities which is technically the most stable part of the nulcear fuel cycle, the Committee is setting a dangerous precedent.

The Subcommittee had previously adopted language I had sponsored which would have provided assurances of full compensation for the public in the event of a waste accident through the same mechanism provided for NRC licensees and other DOE contractors. This mechanism provides Congress the opportunity to assess the consequences of a catastrophic accident in light of the specific circumstances and provide compensation in a rational manner.

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For the most part, the Committee reported a bill that maintains basic structure of Price-Anderson while providing the assurances that the public will be adequately compensated. I want to commend Chairman Udall and the Committee for moving forward with this important legislation.

JOE BARTON.

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SUPPLEMENTAL VIEWS

When the Committee discussed amendments to the Price-Anderson Act, several of my colleagues suggested that Price-Anderson could become a "model" for other hazardous industries. While some of the "no fault" provisions may benefit victims of a severe nuclear accident, other provisions found in the Price-Anderson scheme are quite troubling.

Under current law, and under H.R. 3653 as reported by the Interior Committee, reactor manufacturers, suppliers, and others who play critical roles in the safety of nuclear power plants are totally exempted from any liability, except liability under their contracts with the utility that purchased their equipment or services. This exemption even covers accidents caused by gross negligence and willful misconduct. If we are to avoid a Chernobyl disaster in this country, we must hold all participants in the nuclear industry to the highest standards of care.

The Price-Anderson Act has long been the exception to the traditional rules of tort liability. I urge my colleagues to exercise extreme caution in their suggestions that these rules be duplicated for other hazardous industries.

JOHN SEIBERLING.
GEORGE MILLER.

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DISSENTING VIEWS

H.R. 3653 would continue the features of the Price-Anderson Act that subject the public to increased risk of nuclear accidents and uncompensated injury by (1) limiting the liability of the nuclear industry and the federal government for damage to the public and (2) reducing the financial incentive for cautious operation of nuclear facilities.

I. INSURANCE COVERAGE

Various studies sponsored by the federal government since the 1950s have concluded that a nuclear power plant accident could cause thousands of prompt fatalities, tens of thousands of prompt injuries, hundreds of thousands of delayed cancer fatalities and inherited disorders in children of the exposed population, and billions of dollars of property damage. The 1975 Nuclear Regulatory Commission (NRC) Reactor Safety Study, for example, estimated the average consequences of the worst category of meltdown examined at 3,300 fatalities and 45,000 injuries within 1 year 45,000 delayed cancer fatalities, 240,000 delayed thyroid injuries, 5,100 inherited disorders in children of the exposed population, and property damage amounting to $14 billion. Studies by independent scientific panels have concluded that even these estimates may vastly understate the potential consequences of a nuclear power plant accident.

The insurance coverage provided by H.R. 3653 is inadequate to provide compensation to the victims of nuclear accidents.

First tier insurance

Under H.R. 3653, the licensees of large nuclear power plants are required to maintain only $200 million in liability insurance or "the maximum amount [of liability insurance] available at reasonable cost and on reasonable terms," whichever is more. In 1957, the original Price-Anderson Act required that nuclear power plant licensees maintain $60 million in liability insurance, which is equivalent to about $230 million in 1986 dollars. Thus, under even H.R. 3653 the primary insurance layer will have contracted by 15% in real dollars since 1957.

But the nuclear power reactors planned then were only 50–100 MW; today's nuclear power plants are typically 1000 MW or more, larger by a factor of 10 to 20. Potential nuclear power plant accident consequences are roughly proportional to the dispersed fission product inventory of the reactor's core. A 50 MW reactor, for example, couldn't possibly have released as much radioactivity as the 1000 MW Chernobyl plant in the Soviet Union. When measured against the potential hazard, the primary insurance layer has diminished by at least a factor of 10 since the Price-Anderson system began in 1957.

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This system also enables private insurance pools to determine how much insurance nuclear power plant licensees are required to maintain. By striking that no additional insurance is available, these pools have kept the required level of first tier insurance capped at $160 million since 1979—a period of 7 years. Although the nominal amount of required first tier insurance coverage since 1977 has risen from $140 million to $160 million, in real dollars it has actually declined by 36%. Private insurance companies, acting in concert, should not be allowed to limit the coverage available, yet that is precisely what they do now and would continue to do under H.R. 3653.

Under H.R. 3653, nuclear power plant licensees would continue to have no incentive to obtain liability insurance exceeding the required first tier, because the statute absolves them of responsibility for accident consequences beyond that (apart from payment of a retrospective premium of $63 million or less over a period up to 10 years or longer). If the Price-Anderson Act did not limit their liability, they would certainly procure additional insurance coverage on their own, either from insurance companies or through their own industry pool. After the Three Mile Island 2 accident, for example, the utilities succeeded in increasing their property insurance coverage from $300 million to $1 billion per plant.

Licensees could offer to pay higher premiums in return for increased coverage; the average annual premium now is only about $500,000, equal to less than ⅛ of 1% of the annualized cost of a typical nuclear power plant. And 70% of the premium payment is placed in a reserve fund, adjusted to reflect losses, and refunded to the licensee after 10 years.

This is far less than licensees currently spend for property insurance on their nuclear power plants, typically insured for $1 billion or more. Licensees now pay about $5 million per year for this level of property insurance coverage—10 times more than they pay for liability insurance. According to a 1983 NRC report, these licensees are also responsible for making annual deferred premium payments of up to $50 million per reactor to compensate the owner of the damaged nuclear plant—5 times more than H.R. 3653 could require them to pay in annual deferred premiums to cover damage to the public. Why should licensees be allowed to devote far more resources to insurance for their plants than insurance to compensate nuclear accident victims?

The Committee report recognizes that the licensee need not maintain even the inadequate level of mandatory first tier insurance coverage. If payments are made to compensate victims of a nuclear accident, the insurance coverage under that policy (covering the malfunctioning reactor as well as other reactors at the same site) is reduced by the amount of the payments. While NRC rules presently require the licensee to restore the lost coverage, neither existing law nor H.R. 3653 authorizes NRC to require that a licensee maintain insurance coverage in excess of that the private insurance pools deem to be "available."

In addition, NRC now requires licensees of sites with multiple nuclear power plants to maintain only a single increment of first tier insurance to cover all reactors at the site. If the insurers make payments due to an accident involving one of the plants, H.R. 3653

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would allow the amount of primary layer coverage to be thereafter reduced for all of the plants.

Second tier insurance: The retrospective premium plan

Under H.R. 3653, the licensee of a large nuclear power plant may be assessed deferred premiums of up to $63 million (but no more than $10 million per year) to cover damage resulting from an accident at any nuclear power plant. This is an extremely small contingent liability, equal to about 2.5% of the annualized cost of a nuclear power plant. The maximum deferred premium could easily be increased to $20 million or $30 million within the financial capability of utilities with nuclear plants.

As the number of licensed reactors decreases, however, the aggregate coverage through the retrospective premium plan will decline. In the United States, there have been no new nuclear power plants ordered and completed during the past 13 years. There are no prospects for new orders for commercial nuclear power plants. Consequently, the number of operating plants will probably begin to decrease in the early 1990s, thus reducing the amount of insurance available through the retrospective premium plan. If a serious accident occurs, however, the number of operating plants and size of the retrospective pool may shrink more quickly.

The Committee report clarifies that "termination of a license would not affect the licensee's obligation to pay a deferred premium with respect to an accident that occurred while such license was in effect." Without this clarification, the total retrospective fund would decline sharply over time, because most of the resulting cancers would emerge from latency more than 15 years after the nuclear incident. If deferred premiums were not assessed until it were possible for cancer victims to prove their injuries, then the retrospective fund for an accident in 1995 would be only half of the fund available for an accident in 1986. In other words, within 10 years the size of the retrospective fund would be cut in half.[1]

Even with the clarification in the Committee report, it remains unclear how the former holder of a terminated license would necessarily be available to pay a deferred premium assessed years or decades after its nuclear power plant ceased operation. We may not necessarily assume that today's electric utilities will remain in business indefinitely. Nor may we assume that licensees will always be electric utilities, particularly if utilities were to sell their plants to other companies and lease them back.

No coverage for damage from nuclear sabotage or theft

Despite discussion of this issue since 1984, neither existing law nor H.R. 3653 provide insurance coverage for persons harmed by dispersal of nuclear material diverted away from nuclear facilities or away from the "course of transportation" between facilities. Nor do they cover damage resulting from sabotage of a previously hijacked nuclear material shipment. Dispersal or sabotage could

[1] Actual implementation of the deferred premium could provide yet a smaller fund for nuclear incident victims. Midway through the cancer latency period (30 years) for an accident occurring in 1995, there would be essentially no operating nuclear power plants in existence, unless utilities again begin to order and build new reactors.

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result in harm to the public; the AEC 1983 *Draft Reactor Safety Study*, for example, concluded that a spent fuel shipping cask accident could result in a population dose of 2.1 million person-rems. This dose would be expected to result in hundreds of delayed cancer fatalities, nonfatal cancers and inherited disorders.

II. LIMITATION ON LIABILITY

H.R. 3653 removes the liability ceiling for accidents involving high-level radioactive waste (including spent fuel and transuranic waste), thereby making the federal government responsible for paying full compensation to those harmed by such accidents. There appears to be no rationale for providing full compensation for high-level radioactive waste accidents while continuing to limit the federal government's liability for its other nuclear activities, such as nuclear materials production in reactors that could prove more dangerous than commercial nuclear power plants.

At the Committee mark-up, I offered an amendment to treat incidents involving the Department of Energy's large (4000 MW thermal) N-Reactor, on the bank of the Columbia River at the Hanford Reservation in the state of Washington, in the same manner the bill now treats incidents involving the transportation, storage, or disposal of high-level radioactive waste. This amendment was defeated.

Under existing law, the contractor operating the N-Reactor is not required to maintain any liability insurance coverage, and the federal government is responsible for paying only $500 million to cover the damage caused by any N-Reactor accident. Under H.R. 3653, the federal government's potential liability would increase to $63 million times the number of licensed nuclear power plants. In light of the Chernobyl disaster involving a large graphite-moderate reactor in several ways similar to the N-Reactor,[2] the people of the Pacific Northwest and the rest of the nation as well need this additional financial protection.

The Subcommittee on General Oversight, Northwest Power, and Forest Management conducted a tour of the N-Reactor on May 18 and a hearing on the safety of the N-Reactor on May 19 in Portland, Oregon, less than 300 miles downstream on the Columbia River. Independent experts on graphite reactors testified that an N-Reactor accident on the scale of the Chernobyl disaster was distinctly possible. The experts identified several unresolved safety problems, including:

1. Reaction of the uranium metal fuel with water to produce hydrogen and the potential for explosion.
2. The possibility of single pipe failures that could disable both the primary and emergency core cooling system and lead to melting of 70 fuel rods per failure.
3. Ignition of a self-sustaining graphite fire by the heat of melting fuel.
4. Contamination of the Columbia River by operation of the once-through emergency core cooling system.

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[2] Experts now believe that the Chernobyl plant contained many of the safety features used in U.S. nuclear reactors, including containment barriers, emergency core cooling systems, and pressure suppression sprays and pools.

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5. Multiple pressure spikes rendering the filtered confinement system ineffective and resuting in unfiltered releases of radioactivity.

6. Absence of seismic support appropriate for the seismicity of the area. DOE's FY 1987 budget request itself states that the lack of seismic upgrades could lead to an N-Reactor meltdown.

7. Possible core overheating due to release of Wigner energy stored in the cooler portions of the graphite core and reflector.

8. Absence of an emergency response plan tested with state and local authorities.

In addition to the potential health effects, including cancer and genetic disorders, an accident at the N-Reactor could result in large amounts of property damage. The WPPSS 2 nuclear power plant, which cost nearly $3 billion to construct, is only 18 miles from the N-Reactor, as is the mothballed WPPSS 1 project, which embodies a $2.1 billion investment. Contamination of these 2 plants alone could result in claims for over $5 billion in property damage.

The N-Reactor is also adjacent to the federal Columbia Basin Project, one of the largest areas of irrigated land in the nation. Additional billions of dollars of agricultural investment could be rendered worthless by an N-Reactor accident. In Europe, crops produced on land hundreds of miles from the Chernobly accident have been plowed under due to radioactive contamination. Why should the people of the Pacific Northwest remain at risk for uncompensated damage due to operation of a federal government reactor?

The federal government also owns other nuclear weapons production reactors and research reactors in various parts of the nation. A recent General Accounting Office report stated that DOE indemnifies nearly 300 contractor-operated facilities involving nuclear materials.

The federal government now has plans to populate earth orbit with radioisotope thermal generators (RTGs, each containing 10 or more kilograms of plutonium) and later with nuclear reactors as part of the Strategic Defense Initiative ("Star Wars"). These generators and reactors will be hovering or circling the world only 100 miles above the surface of the planet, with no possible "containment" for radionuclides escaping in an accident. Accidents involving these DOE-owned devices would probably be covered under the indemnification provisions of H.R. 3653, but the federal government's liability for damage resulting from dispersal of radioactive matrials from RTGs or nuclear reactors would be limited to a few billion dollars at most.

Supporters of H.R. 3653 may claim that all victims would be compensated, because the bill states that,

> In the event of a nuclear incident involving damages in excess of the amount of aggregate liability, . . . the Congress will thoroughly review the particular incident . . . and take whatever action is determined to be necessary (including approval of appropriate compensation plans and appropriation of funds) to provide full and prompt compensation to the public for all public liability claims resulting from a disaster of such magnitude.

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This provision is meaningless. What is the purpose of a liability ceiling at all, if Congress is expected to provide full compensation to accident victims in any event? One Congress cannot obligate a subsequent Congress to take any action. In addition, this provision merely purports to require a future Congress to "take whatever action is determined to be necessary," a tautology at best.

III. INFLATION ADJUSTMENT

Between 1960 and 1985, inflation decreased the value of a dollar from $1.00 to 27 cents (nearly a factor of 4) even though that period included many years of relative price stability. At 5% annual inflation, $1.00 erodes in 10 years of just 61 cents. H.R. 3653 not only extends the Price-Anderson system for 10 years, but it establishes the level of deferred premiums that licensees could be paying decades into the future.[3]

The Committe had adopted a provision directing NRC to adjust the first and second tiers of insurance to account for inflation, but this was removed at the final Committee session. Thus, all of the claims about the financial protection to accident victims provided by H.R. 3653 must be substantially discounted.

IV. SUBROGATION

Under existing law and H.R. 3653, every nuclear power plant constructor, nuclear reactor manufacturer and component supplier is completely exempt from liability for damage to the public from any nuclear accident, even if the accident were caused by its own negligence, gross negligence, recklessness, or willfull disregard for safety. Every electric utility is also exempt from all liability except to pay deferred premium of up to $5 million (existing law) or $63 million (H.H. 3653).

There is no justification for removing the usual financial incentives to avoid causing harm to the public. The Committee at one point adopted a provision to partly restore this incentive by allowing any person who pays a deferred premium or the federal government (if it pays out compensation or indemnification) to recover the amounts paid "from the person at whose facility the nuclear incident occurred, or from any contractor or agent of such person, if the nuclear incident resulted, in while or part, from the gross negligence of such person, contractor, or agent." Even this limited subrogation provision would have allowed all elements of the nuclear industry to escape liability for negiligence—the minimum standard of care applicable to all other industries.

But even this limited subrogation provision was removed from H.R. 3653. It should be restored so that the nuclear industry has a financial incentive to avoid harm to the public. Constructors, manufacturers, and component suppliers are already responsible to the owners of nuclear power plants for damage to the plant itself; General Public Utilities sued the Three Mile Island 2 reactor manufac-

[3] If an accident were to occur in 1996, for example, deferred premium payments could extend to the year 2003 (if assessed at the maximum allowed rate of $10 million per reactor licensee per year) or for decades beyong, since H.R. 3653 establishes no outer time limit on assessment of deferred premiums (as long as the total amount per licensee does not exceed $63 million).

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turer Babcock & Wilcox for $4 billion and a group of utilities has sued Brown & Root for $6 billion due to its performance as architect-engineer of the South Texas nuclear plants. Why shouldn't the nuclear industry also be responsible to the public?

V. WAIVERS OF DEFENSES

Under present law and H.R. 3653, the Nuclear Regulatory Commission (NRC) must determine that a nuclear incident was a "extraordinary nuclear occurrence" (ENO) before victims of the incident might benefit by waiver of certain defenses to liability (those based upon fault, certain immunities, or statutes of limitation shorter than 20 years under existing law or shorter than 3 years from discovery of the injury). After the Three Mile Island incident, it took NRC a year to decide that the accident was not an ENO.

NRC's guidelines for determining whether an ENO has occurred require a finding that the nuclear incident has resulted in "the death or hospitalization, within 30 days of the event, of five or more people located offsite showing objective clinical evidence of physical injury." Such clinical evidence is not likely to appear within 30 days in any person exposed to a whole-body radiation dose of less than 30 rems, even though exposure of 10,000 persons to that dose would be expected to result years later in approximately 60 cancer fatalities, 60 nonfatal cancers and 90 serious inherited disorders. In addition, radiation doses to 10,000 persons that would show no prompt symptoms of injury could nevertheless produce 1000 deyayed lung cancer fatalities, 300 delayed intestinal cancer fatalities, and over 2000 delayed thyroid cancer fatalities.

The ENO requirement is not necessary and should be removed. Supporters of the Price-Anderson system emphasize that it provides benefits to nuclear victims by reducing their burdens of proof. If the waivers do not apply, then this is completely untrue. Even with the waivers, nuclear incident victims may nevertheless face genetic disorders resulted from the nuclear incident and not from other causes. Limiting the waivers to ENOs only erects another obstacle to compensation.

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